

(c) The Administrator will decide whether the borrower is eligible for the deferment and will notify the borrower of the decision.

**§ 1703.312 RUS review requirements.**

Borrowers shall ensure that funds are invested in the rural development project as approved by RUS. The Administrator reserves the right to review the books and copy records of borrowers receiving loan payment deferments as necessary to ensure that the investments in the rural development project are in accordance with this subpart and the representations and purposes stated in the borrower's completed application. If an audit discloses that the amount deferred was not used for the purposes stated in the completed application, the borrower shall be required to promptly repay the amount deferred and the benefits of the deferment to the borrower will be recaptured by RUS. The borrower is responsible for ensuring that disbursements and expenditures of funds covering the investment in the rural development project are properly supported with certifications, invoices, contracts, bills of sale, cancelled checks, or any other forms of evidence determined appropriate by the Administrator and that such supporting material is available at the borrower's premises for review by the RUS field accountant, borrower's certified public accountant, the Office of Inspector General, the General Accounting Office and any other accountant conducting an audit of the borrower's financial statements for this rural development program.

**§ 1703.313 Compliance with other regulations.**

(a) Investments in a rural economic development project made by an electric borrower under this subpart are subject to the provisions of 7 CFR part 1717, Subpart N, Investments, Loans and Guarantees by Electric Borrowers.

(b) Investments in a rural economic development project made by a telephone borrower under this subpart are subject to the provisions of 7 CFR Part 1744, Post Loan Policies and Procedures Common to Guaranteed and Insured Loans.

**PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS**

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AUTHORITY: 7 U.S.C. 901–950(b); Pub. L. 99–591, 100 Stat. 3341; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 57 FR 1053, Jan. 9, 1992, unless otherwise noted.

### Subpart A—General

#### § 1710.1 General statement.

(a) This part establishes general and pre-loan policies and requirements that apply to both insured and guaranteed loans to finance the construction and improvement of electric facilities in rural areas, including generation, transmission, and distribution facilities.

(b) Additional pre-loan policies, procedures, and requirements that apply specifically to guaranteed and/or insured loans are set forth elsewhere:

(1) For guaranteed loans in 7 CFR part 1712 and RUS Bulletins 20–22, 60–10, 86–3, 105–5, and 111–3, or the successors to these bulletins; and

(2) For insured loans in 7 CFR part 1714 and in RUS Bulletins 60–10, 86–3, 105–5, and 111–3, or the successors to these bulletins.

(c) This part supersedes those portions of the following RUS Bulletins and supplements that are in conflict.

20–5 Extensions of Payments of Principal and Interest

20–20 Deferment of Principal Repayments for Investment in Supplemental Lending Institutions

20–22 Guarantee of Loans for Bulk Power Supply Facilities

20–23 Section 12 Extensions for Energy Resources Conservation Loans

60–10 Construction Work Plans, Electric Distribution Systems

86–3 Headquarters Facilities for Electric Borrowers

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105-5 Financial Forecast-Electric Distribution Systems  
 111-3 Power Supply Surveys  
 120-1 Development, Approval, and Use of Power Requirements Studies

(d) When parts 1710, 1712, and 1714 are published in final form, the bulletins cited in paragraph (b) of this section will be rescinded, in whole or in part, or revised.

[57 FR 1053, Jan. 9, 1992, as amended at 58 FR 66262, Dec. 20, 1993]

### § 1710.2 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this part, the following terms shall have the following meanings:

*Administrator* means the Administrator of RUS or his or her designee.

*APRR* means Average Adjusted Plant Revenue Ratio calculated as a simple average of the adjusted plant revenue ratios for 1978, 1979 and 1980 as follows:

$$APRR = \frac{A + B}{C - D}$$

where:

A=Distribution (plant), which equals Part E, Line 14(e) of RUS Form 7;

B=General Plant, which equals Part E, Line 24(e) of RUS Form 7;

C=Operating Revenue and Patronage Capital, which equals Part A, Line 1 of RUS Form 7; and

D=Cost of Power, which equals the sum of Part A, Lines 2, 3, and 4 of RUS Form 7.

*Area Coverage* means the provision of adequate electric service to the widest practical number of rural users in the borrower's service area during the life of the loan.

*Borrower* means any organization that has an outstanding loan made or guaranteed by RUS for rural electrification, or that is seeking such financing.

*Bulk Transmission Facilities* means the transmission facilities connecting power supply facilities to the subtransmission facilities, including both the high and low voltage sides of the transformer used to connect to the subtransmission facilities, as well as related supervisory control and data acquisition systems.

*Call provision* has the same meaning as "prepayment option".

*Consolidation* means the combination of 2 or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations.

*Consumer* means a retail customer of electricity, as reported on RUS Form 7, Part R, Lines 1-7.

*Demand side management* (DSM) means the deliberate planning and/or implementation of activities to influence consumer use of electricity provided by a distribution borrower to produce beneficial modifications to the system load profile. Beneficial modifications to the system load profile ordinarily improve load factor or otherwise help in utilizing electric system resources to best advantage consistent with acceptable standards of service and lowest system cost. Load profile modifications are characterized as peak clipping, valley filling, load shifting, strategic conservation, strategic load growth, and flexible load profile. (See, for example, publications of the Electric Power Research Institute (EPRI), 3412 Hillview Avenue, Palo Alto, CA 94304, especially "Demand-Side Management Glossary" EPRI TR-101158, Project 1940-25, Final Report, October 1992.) DSM includes energy conservation programs. It does not include sources of electrical energy such as renewable energy systems, fuel cells, or traditionally fueled generation, such as fossil or nuclear fueled generators.

*Distribution Borrower* means a borrower that sells or intends to sell electric power and energy at retail in rural areas.

*Distribution Facilities* means all electrical lines and related facilities beginning at the consumer's meter base, and continuing back to and including the distribution substation.

*DSC* means Debt Service Coverage of the borrower calculated as:

$$DSC = \frac{A + B + C}{D}$$

Where:

All amounts are for the same calendar year and are based on the RUS system of accounts and RUS Forms 7 and 12. References to line numbers in the RUS Forms 7 and 12 refer to the June 1994 version of RUS Form 7 and the December 1993 version of RUS

Form 12, and will apply to corresponding information in future versions of the forms;

A=Depreciation and Amortization Expense of the borrower, which equals Part A, Line 12 of RUS Form 7 (distribution borrowers) or Section A, Line 20 of RUS Form 12a (power supply borrowers);

B=Interest expense on total long-term debt of the borrower, which equals Part A, Line 15 of RUS Form 7 or Section A, Line 22 of RUS Form 12a, except that interest expense shall be increased by  $\frac{1}{3}$  of the amount, if any, by which restricted rentals of the borrower (Part M, Line 3 of RUS Form 7 or Section K, Line 4 of RUS Form 12h) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets] or RUS Form 12a, Section B, Line 38 [Total Margins & Equities] less Line 28 [Regulatory Assets]);

C=Patronage Capital or Margins of the borrower, which equals Part A, Line 28 of RUS Form 7 or Section A, Line 35 of RUS Form 12a; and

D=Debt Service Billed (RUS + other), which equals the sum of all payments of principal and interest required to be made on account of total long-term debt of the borrower during the calendar year, plus  $\frac{1}{3}$  of the amount, if any, by which restricted rentals of the borrower (Part M, Line 3 of RUS Form 7 or Section K, Line 4 of RUS Form 12h) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets] or RUS Form 12a, Section B, Line 38 [Total Margins & Equities] less Line 28 [Regulatory Assets]);

*DSM activities* means activities of the type referred to in § 1710.354(f).

*DSM plan* means a plan that describes the implementation at the distribution level of the DSM activities identified in the integrated resource plan as having positive net benefits. See § 1710.357.

*Electric system* means all of the borrower's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear, or other fuel or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the borrower's generating plants, including any interest or

participation of the borrower in any such facilities or any rights to the output or capacity thereof, together with all lands, easements, rights-of-way, other works, property, structures, contract rights and other tangible and intangible assets of the borrower in each case used or useful in such electric system.

*Equity* means total margins and equities, which equals Part C, Line 33 of RUS Form 7 (distribution borrowers) or Section B, Line 34 of RUS Form 12a (power supply borrowers).

*Final maturity* means the final date on which all outstanding principal and accrued interest on an electric loan is due and payable.

*Five percent hardship rate* means an interest rate of 5 percent applicable to a hardship rate loan.

*Fund advance period* means the period of time during which the Government may advance loan funds to the borrower. See 7 CFR 1714.56.

*Generation Facilities* means the generating plant and related facilities, including the building containing the plant, all fuel handling facilities, and the stepup substation used to convert the generator voltage to transmission voltage, as well as related energy management (dispatching) systems.

*Hardship rate loan* means a loan made at the 5 percent hardship rate pursuant to 7 CFR 1714.8.

*Insured Loan* means a loan made pursuant to Section 305 of the RE Act, and may include a direct loan made under Section 4 of the RE Act.

*Integrated Resources Plan (IRP)* means a plan resulting from the planning and selection process for new energy resources that evaluates the benefits and costs of the full range of alternatives, including new generating capacity, power purchases, DSM programs, system operating efficiency, and renewable energy systems.

*Interest rate cap* means a maximum interest rate of 7 percent applicable to certain municipal rate loans as set forth in § 1710.7.

*Interest rate term* means a period of time selected by the borrower for the purpose of determining the interest rate on an advance of funds. See 7 CFR 1714.6.

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*Loan* means any loan made or guaranteed by RUS.

*Loan Contract* means the agreement, as amended, supplemented, or restated from time to time, between a borrower and RUS providing for loans made or guaranteed pursuant to the RE Act.

*Loan Feasibility* means that the borrower has the capability of repaying the loan in full as scheduled, in accordance with the terms of the mortgage, note, and loan contract.

*Loan Guarantee* means a loan guarantee made by RUS pursuant to the RE Act.

*Loan period* means the period of time during which the facilities included in a loan application will be constructed. It commences with the date shown on page 1, in the block headed "Cost Estimates as of," of RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, which is the same as the date on the Financial and Statistical Report submitted with the loan application. The loan period may be up to 4 years for distribution borrowers and, except in the case of a loan for new generating and associated transmission facilities, up to 4 years for the transmission facilities and improvements or replacements of generation facilities for power supply borrowers. The loan period for new generating facilities is determined on a case by case basis.

*Merger* means the combining, pursuant to state law, of borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations.

*Mortgage* means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

*Municipal rate loan* means a loan made at a municipal interest rate pursuant to 7 CFR 1714.5.

*ODSC* means Operating Debt Service Coverage of the electric system calculated as:

$$\text{ODSC} = \frac{A + B + C}{D}$$

Where:

All amounts are for the same calendar year and are based on the RUS system of accounts and RUS Form 7. References to line numbers in the RUS Form 7 refer to the June 1994 version of the form, and will apply to corresponding information in future versions of the form;

A=Depreciation and Amortization Expense of the electric system, which usually equals Part A, Line 12 of RUS Form 7;

B=Interest expense on total long-term debt of the electric system, which usually equals Part A, Line 15 of RUS Form 7, except that such interest expense shall be increased by 1/3 of the amount, if any, by which restricted rentals of the electric system (usually Part M, Line 3 of RUS Form 7) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets]);

C=Patronage Capital & Operating Margins of the electric system, which usually equals Part A, Line 20 of RUS Form 7, plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System; and

D=Debt Service Billed (RUS + other), which equals the sum of all payments of principal and interest required to be made on account of total long-term debt of the electric system during the calendar year, plus 1/3 of the amount, if any, by which restricted rentals of the Electric System (usually Part M, Line 3 of RUS Form 7) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets]).

*Off-grid renewable energy system* means an energy source which is not electrically attached to the grid. Off-grid systems are operated as an island and will have no direct impact on a utility system's physical operations. An off-grid system need not meet electric utility power quality standards.

*On-grid renewable energy system* means an energy source electrically attached to an existing grid. It can be attached on either side of a consumer's meter. On-grid systems are operated as part of the overall utility system and have a direct impact on a utility system's operations. An on-grid system must meet electric utility power quality and safety standards.

*Ordinary Replacement* means replacing one or more units of plant, called "retirement units", with similar units when made necessary by normal wear

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and tear, damage beyond repair, or obsolescence of the facilities.

*OTIER* means Operating Times Interest Earned Ratio of the electric system calculated as:

$$\text{OTIER} = \frac{A + B}{A}$$

Where:

All amounts are for the same calendar year and are based on the RUS system of accounts and RUS Form 7. References to line numbers in the RUS Form 7 refer to the June 1994 version of the form, and will apply to corresponding information in future versions of the form;

A=Interest expense on total long-term debt of the electric system, which usually equals Part A, Line 15 of RUS Form 7, except that such interest expense shall be increased by  $\frac{1}{3}$  of the amount, if any, by which restricted rentals of the electric system (usually Part M, Line 3 of RUS Form 7) exceed 2 percent of the borrower's equity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets]); and

B=Patronage Capital & Operating Margins of the electric system, which usually equals Part A, Line 20 of RUS Form 7, plus cash received from the retirement of patronage capital by suppliers of electric power and by lenders for credit extended for the Electric System.

*Power Requirements Study* (PRS) means the thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity.

*Power Supply Borrower* means a borrower that sells or intends to sell electric power at wholesale to distribution or power supply borrowers pursuant to RUS wholesale power contracts.

*Prepayment option* means a provision included in the loan documents to allow the borrower to prepay all or a portion of an advance on a municipal rate loan on a date other than a rollover maturity date. See 7 CFR 1714.9.

*PRR* means Plant Revenue Ratio calculated as:

$$\text{PRR} = \frac{A}{B - C}$$

where:

A = Total Utility Plant, which equals Part C, Line 3 of RUS Form 7;

B = Operating Revenue and Patronage Capital, which equals Part A, Line 1 of RUS Form 7; and

C = Cost of Power, which equals the sum of Part A, Lines 2, 3, and 4 of RUS Form 7.

*PRS Work Plan* means the plan that sets forth the resources, methods, schedules, and milestones to be used in the preparation and maintenance of a power requirements study.

*RE Act* means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

*RE Act beneficiary* means a person, business, or other entity that is located in a rural area.

*REA* means the Rural Electrification Administration formerly an agency of the United States Department of Agriculture and predecessor agency to RUS with respect to administering certain electric and telephone loan programs.

*Renewable energy system* means a source of energy (kWh) used to meet borrower electric load that is fueled by any of the following technologies: Hydropower, geothermal, biomass, municipal waste, solar thermal, photovoltaic, wind, fuel cells not fueled by fossil fuels. See, for example, "Renewable Resources in U.S. Electricity Supply," February 1993, Publication number DOE/EIA 0561, published by the Department of Energy, Energy Information Administration, Forrestal Building, EI-231, Washington, DC 20585.

*Retirement Unit* means a substantial unit of property, which when retired, with or without being replaced, is accounted for by removing its book cost from the plant account.

*Rollover maturity date* means the last day of an interest rate term.

*Rural area* means any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any urban area, as defined by the Bureau of the Census. For purposes of the "rural area" definition, the character of an area is determined at the time of the initial loan to furnish or improve service in the area.

(i) For initial RUS loans made prior to November 1, 1993, the RE Act defined "rural area" to mean any area of the United States not included within the

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boundaries of any city, village, or borough having a population exceeding 1500. An area determined to be a "rural area" for the purposes of an initial loan made prior to November 1, 1993, shall continue to be considered a "rural area."

(ii) For initial RUS loans made on or after November 1, 1993, this definition shall apply. In determining the character of the area, RUS will rely on the Bureau of the Census designation.

*RUS* means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to Section 232 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354, 108 Stat. 3178), successor to REA with respect to administering certain electric and telephone programs. See 7 CFR 1700.1.

*Subtransmission Facilities* means the transmission facilities that connect the high voltage side of the distribution substation to the low voltage side of the bulk transmission or generating facilities, as well as related supervisory control and data acquisition facilities.

*System Improvement* means the change or addition to electric plant facilities to improve the quality of electric service or to increase the quantity of electric power available to RE Act beneficiaries.

*TIER* means Times Interest Earned Ratio of the borrower calculated as:

$$\text{TIER} = \frac{A + B}{A}$$

Where:

All amounts are for the same calendar year and are based on the RUS system of accounts and RUS Forms 7 and 12. References to line numbers in the RUS Forms 7 and 12 refer to the June 1994 version of RUS Form 7 and the December 1993 version of RUS Form 12, and will apply to corresponding information in future versions of the forms;

A=Interest expense on total long-term debt of the borrower, which equals Part A, Line 15 of RUS Form 7 or Section A, Line 22 of RUS Form 12a, except that interest expense shall be increased by  $\frac{1}{3}$  of the amount, if any, by which restricted rentals of the borrower (Part M, Line 3 of RUS Form 7 or Section K, Line 4 of RUS Form 12h) exceed 2 percent of the borrower's eq-

uity (RUS Form 7, Part C, Line 36 [Total Margins & Equities] less Line 26 [Regulatory Assets] or RUS Form 12a, Section B, Line 38 [Total Margins & Equities] less Line 28 [Regulatory Assets]); and

B=Patronage Capital or Margins of the borrower, which equals Part A, Line 28 of RUS Form 7 or Section A, Line 35 of RUS Form 12a.

*Total Assets* means Part C, Line 26 of RUS Form 7 (distribution borrowers) or Section B, Line 27 of RUS Form 12a (power supply borrowers).

*Total Utility Plant* means Part C, Line 3 of RUS Form 7 (distribution borrowers) or Section B, Line 27 of RUS Form 12a (power supply borrowers).

*Transmission Facilities* means all electrical lines and related facilities, including certain substations, used to connect the distribution facilities to generation facilities. They include bulk transmission and subtransmission facilities.

*Urban area* is defined by the Bureau of the Census as an area comprising all territory, population, and housing units in urbanized areas and in places of 2500 or more persons outside urbanized areas. More specifically, "urban" consists of territory, persons, and housing units in:

(i) Places of 2500 or more persons incorporated as cities, villages, boroughs (except in Alaska and New York), and towns (except in the six New England States, New York, and Wisconsin), but excluding the rural portions of "extended cities."

(ii) Census designated places of 2500 or more persons.

(iii) Other territory, incorporated or unincorporated, included in urbanized areas.

*Urbanized area* means an urbanized area as defined by the Bureau of the Census in notices published periodically in the FEDERAL REGISTER. Generally an urbanized area is characterized as an area that comprises a place and the adjacent densely settled territory that together have a minimum population of 50,000 people.

(b) *Rules of Construction.* Unless the context otherwise indicates, "includes" and "including" are not limiting, and

“or” is not exclusive. The terms defined in paragraph (a) of this part include the plural as well as the singular, and the singular as well as the plural.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992, as amended at 58 FR 66263, Dec. 20, 1993; 59 FR 495, Jan. 4, 1994; 59 FR 66440, Dec. 27, 1994; 60 FR 3730, Jan. 19, 1995; 60 FR 67400, Dec. 29, 1995]

#### § 1710.3 Form and bulletin revisions.

References in this part to RUS or REA forms or line numbers in RUS or REA forms are based on RUS or REA Form 7 and Form 12 dated December 1992, unless otherwise indicated. These references will apply to corresponding information in future versions of the forms. The terms “RUS form”, “RUS standard form”, “RUS specification”, and “RUS bulletin” have the same meanings as the terms “REA form”, “REA standard form”, “REA specification”, and “REA bulletin”, respectively, unless otherwise indicated.

[59 FR 66440, Dec. 27, 1994]

#### § 1710.4 Exercise authority.

Consistent with the RE Act and other applicable laws, the Administrator may waive or reduce any requirement imposed by this part or other RUS regulations on an electric borrower, or a lender whose loan is guaranteed by RUS, if the Administrator determines that imposition of the requirement would adversely affect the Government’s financial interest.

#### § 1710.5 Availability of forms.

Information about the availability of RUS forms and publications cited in this part is available from Administrative Services Division, Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500. These RUS forms and publications may be reproduced.

#### § 1710.6 Applicability of certain provisions to completed loan applications.

(a) Certain new or revised policies and requirements set forth in this part, which are listed in this paragraph, shall not apply to a pending loan application that has been determined by RUS to be complete as of January 9, 1992, the date of publication of such

policies and requirements in the FEDERAL REGISTER. This exception does not apply to loan applications received after said date, nor to incomplete applications pending as of said date. This exception applies only to the following provisions:

(1) Paragraph 1710.115(b)—with respect to limiting loan maturities to the expected useful life of the facilities financed;

(2) Section 1710.116—with respect to the requirement to develop and follow an equity development plan;

(3) Paragraph 1710.151(f)—with respect to the borrower providing satisfactory evidence that a state regulatory authority will allow the facilities to be included in the rate base or otherwise allow sufficient revenues to repay the loan;

(4) Paragraphs 1710.250(b), 1710.251(a), and 1710.252(a)—with respect to the requirement that improvements, replacements, and retirements of generation plant be included in a Construction Work Plan; and

(5) Paragraph 1710.300(d)(5)—with respect to the requirement that a borrower’s financial forecast include a sensitivity analysis of a reasonable range of assumptions for each of the major variables in the forecast.

(b) Certain provisions of this part apply only to loans made on or after February 10, 1992. These provisions are identified in the individual sections of this part.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992, as amended at 58 FR 66263, Dec. 20, 1993]

#### § 1710.7 Exemptions of RUS operational controls under section 306E of the RE Act.

(a) *General policy.* (1) Section 306E of the RE Act directs the Administrator to issue interim final regulations to minimize approval rights, requirements, restrictions, and prohibitions imposed on the operations of electric borrowers whose net worth exceeds 110 percent of the outstanding loans made or guaranteed to the borrower by RUS. The section also directs the Administrator, when requested by a private lender providing financing for capital investments by such borrowers, to

offer, without delay, to share the government's lien on the borrowers' systems or subordinate the government's lien on the property financed by the private lender.

(2) In issuing the regulations, the Administrator is authorized to establish requirements, guided by the practices of private lenders with respect to similar credit risks, to ensure that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate. If the regulations are not issued within 180 days of enactment of section 306E, the Administrator may not, until the regulations are issued, require prior approval of, or establish any requirement, restriction, or prohibition, with respect to the operations of any electric borrower that meets the 110 percent ratio.

(3) Nothing in section 306E limits the authority of the Administrator to establish terms and conditions on the use of funds from loans made or guaranteed by RUS, to establish loan feasibility criteria and other requirements for the approval of RUS loans or loan guarantees, such as those set forth in this part, or to take any other action specifically authorized by law.

(4) This section addresses the application of section 306E of the RE Act to RUS operational controls and other requirements that apply in general to RUS borrowers. The application of section 306E to lien accommodations and subordinations is set forth in 7 CFR 1717.860 and 1717.904.

(5) The exemptions granted by this section, 7 CFR 1717.860, and 7 CFR 1717.904 apply only to RUS controls and approval rights. They do not affect the controls and approval rights of other co-mortgagees under the RUS mortgage.

(6) For purposes of this section, the terms "default," "financed or funded by RUS," "interchange agreement," "interconnection agreement," "loan documents," "pooling agreement," "power supply contract," and "wheeling agreement" have the meanings as set forth in 7 CFR 1717.602.

(b) *Determination of ratio.* The following principles and procedures will apply to the calculation of net worth as a ratio, expressed as a percent, to

the outstanding balance of all loans made or guaranteed to the borrower by RUS, hereinafter called the borrower's "net worth to RUS debt ratio", or simply "the ratio":

(1) For purposes of determining whether a borrower is exempt from approvals, requirements, restrictions, or prohibitions imposed by RUS with respect to borrower operations, i.e., "operational controls," the ratio normally will be based on data as of December 31. Net worth will be based on the year-end financial and statistical reports submitted by borrowers to RUS, and outstanding loans made or guaranteed by RUS will be based on RUS's records. The financial and statistical reports (Form 7 for distribution borrowers and Form 12a for power supply borrowers) are subject to RUS review and revision, and they must comply with RUS's system of accounts and accounting principles set forth in 7 CFR part 1767. Since sinking fund depreciation is not approved under 7 CFR part 1767, net worth for borrowers using sinking fund depreciation will be calculated as if the borrower had been using straight line depreciation;

(2) Net worth will be calculated by taking total margins and equities (from Part C of RUS Form 7 for distribution borrowers, or Section B of RUS Form 12a for power supply borrowers) and subtracting assets properly recordable in account 182.2, Unrecovered Plant and Regulatory Study Costs, and account 182.3, Other Regulatory Assets, as defined in 7 CFR part 1767; and

(3) By no later than July 1 of each year, RUS will notify each borrower in writing of its exemption status. If the borrower's net worth to RUS debt ratio exceeds 110 percent based on the most recent year-end data, the borrower will be exempt from the operational controls exempted under paragraph (c) of this section until subsequently notified in writing by RUS that it is no longer exempt.

(c) *Borrower operations exempted from RUS controls.* Borrowers who are notified by RUS in writing that their net worth to RUS debt ratio exceeds 110 percent are exempted from the operational controls of the RUS mortgage

and loan contract listed in this paragraph. These controls, which are implemented through RUS regulations and other documents, are as follows:

(1) *RUS approval of extensions and additions.* RUS approval of extensions and additions to borrowers' electric systems, except for the following:

(i) Extensions and additions financed by RUS;

(ii) Construction, procurement, or leasing of generating facilities, regardless of the source of funding, if the combined capacity of the facilities to be built, procured, or leased, including any future facilities included in the planned project, will exceed 25 megawatts in the case of power supply borrowers, or the lesser of 5 megawatts or 30 percent of the borrower's equity in the case of distribution borrowers;

(iii) Acquisition or leasing of existing electric facilities or systems in service, regardless of the source of funding, whose purchase price, or capitalized value in the case of a lease, exceeds 10 percent of the borrower's net utility plant; and

(iv) Construction, procurement, or leasing of electric facilities, regardless of the source of funding, to serve a customer whose annual kWh purchases or maximum annual kW demand in the foreseeable future is projected to exceed 25 percent of the borrower's total kWh sales or maximum kW demand in the year immediately preceding the acquisition or start of construction;

(2) *Long-range engineering plans and construction work plans.* RUS approval of long-range engineering plans and CWPs if the borrower does not intend to seek RUS financing for any of the facilities, equipment or other purposes included in those plans. However, if requested by RUS, a borrower must provide an informational copy of such plans to RUS;

(3) *Plans and specifications.* RUS approval of plans and specifications for construction not financed by RUS;

(4) *Standard forms of construction contracts, and engineering and architectural services contracts.* RUS requirements to use standard forms of contracts for construction, procurement, engineering services, and architectural services, if the construction, procurement or services are not financed by RUS. To

be eligible for this waiver the contracts used must not contain any provisions that prohibit or restrict the assignment of the contracts to the government upon the exercise by RUS of its remedies under security instruments securing loans made or guaranteed by RUS;

(5) *Contract bidding requirements.* RUS requirements regarding the competitive bidding of construction contracts, if the construction is not financed by RUS;

(6) *RUS approval of contracts.* (i) Construction contracts and architectural and engineering contracts. RUS approval of contracts for construction and procurement and for architectural and engineering services, if such construction, procurement or services are not financed by RUS.

(ii) *Large retail power contracts.* RUS approval of contracts to sell electric power to retail customers except when the contract is for longer than 2 years and the kWh sales or kW demand for any year covered by the contract exceeds 25 percent of the borrower's total kWh sales or maximum kW demand for the year immediately preceding execution of the contract. This exemption applies regardless of the source of funding of any plant extensions, additions or improvements that may be involved in connection with the contract.

(iii) *Power supply arrangements.* (A) RUS approval of power supply contracts (including but not limited to economy energy sales and emergency power and energy sales), interconnection agreements, interchange agreements, wheeling agreements, pooling agreements, and any other similar power supply arrangements subject to approval by RUS, if they have a term of 2 years or less. Amendments to said power supply arrangements are also exempted from RUS approval provided that the amendment does not extend the term of the arrangement for more than 2 years beyond the date of the amendment.

(B) Any amendment to a schedule or exhibit contained in any power supply arrangement subject to RUS approval that merely has the effect of either altering a list of interconnection or delivery points or changing the value of a variable term (but not the formula

itself) contained in a formulary rate or charge.

(C) The exemptions under this paragraph (c)(6)(iii) apply regardless of whether the borrower is a seller or purchaser of the services furnished by the contracts or arrangements, and regardless of whether or not a Federal power marketing agency is a party to any of them.

(iv) *System management and maintenance contracts.* RUS approval of contracts for the management and operation of a borrower's electric system or for the maintenance of the electric system, if such contracts do not cover all or substantially all of the electric system.

(v) *Other contracts.* [Reserved];

(7) *RUS approval of general manager.* RUS approval of the selection of a borrower's manager and employment contract, provided that the borrower is not in default under its loan documents or any other agreement with RUS. Nothing herein shall limit the right of RUS under the loan documents to request termination of the employment of a manager in the event of a default by the borrower;

(8) *Board of directors.* RUS approval of compensation of a borrower's board of directors;

(9) *Certain expenditures.* (i) RUS approval of expenditures for legal, accounting, and supervisory services by a borrower. However, while expenditures for accounting do not require RUS approval, the selection of a certified public accountant by the borrower to prepare audited reports required by RUS remains subject to RUS approval.

(ii) RUS approval of expenditures for engineering services by a borrower, if such engineering services will not be financed by RUS;

(10) *Banks.* RUS approval of banks or other depositories used by a borrower. However, without the prior written approval of RUS, a borrower shall not deposit funds from loans made or guaranteed by RUS in any bank or other depository that is not insured by the Federal Deposit Insurance Corporation or other Federal agency acceptable to RUS, or in any account not so insured.

(11) *Certain equipment.* RUS approval of the purchase of data processing equipment and system control equip-

ment by a borrower, if the equipment is not financed by RUS;

(12) *Notification of rate changes.* Requirement that distribution borrowers notify RUS in writing of proposed changes in electric rates 90 days prior to the effective date of such rates. Instead, the required notification period shall be 30 days, and such notification shall be required only if requested by RUS;

(13) *Consolidations and mergers.* RUS approval of mergers and consolidations, and conveyances or transfers of the mortgaged property substantially as an entirety, if the following conditions are met:

(i) Such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security of the mortgage and the rights and powers of the mortgagees;

(ii) The entity formed by such consolidation or with which the borrower is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall execute and deliver to the mortgagees a mortgage supplemental in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the outstanding notes and the performance and observance of every covenant and condition of the mortgage;

(iii) Immediately after giving effect to such transaction, no default under the mortgage shall have occurred and be continuing;

(iv) The borrower shall have delivered to the mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the mortgagees, which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this section and that all conditions precedent herein provided for relating to such transaction have been complied with;

(v) The borrower shall have delivered to the mortgagees an opinion of counsel in form and substance satisfactory to each of the mortgagees; and

(vi) The entity formed by such consolidation or with which the borrower

is merged or the corporation which acquires by conveyance or transfer the mortgaged property substantially as an entirety shall be an entity:

(A) Having equity equal to at least 27% of its total assets on a pro forma basis after giving effect to such transaction;

(B) Having a pro forma TIER of not less than 1.50 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years; and

(C) Having net utility plant equal to or greater than 1.0 times its total long-term debt on a pro forma basis;

(14) *Sale, lease, or transfer of capital assets.* RUS approval for a distribution borrower to sell, lease, or transfer capital assets, if the following conditions are met:

(i) The borrower is not in default;

(ii) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.5, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years;

(iii) The sale, lease, or transfer of assets will not reduce the borrower's existing or future requirements for energy or capacity being furnished to the borrower under any wholesale power contract which has been pledged as security to the government;

(iv) Fair market value is obtained for the assets;

(v) The aggregate value of assets sold, leased, or transferred in any 12-month period is less than 10 percent of the borrower's net utility plant prior to the transaction;

(vi) The proceeds of such sale, lease, or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately:

(A) Applied as a prepayment of all notes secured under the mortgage equally and ratably;

(B) In the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the borrower's utility business; or

(C) Applied to the acquisition of construction of utility plant; and

(vii) If the borrower has an RUS-approved wholesale power contract with a power supply borrower (seller), the cir-

cumstances of the sale, lease or transfer of capital assets conform with the conditions in such contract under which the seller may not withhold its consent to the sale, lease or transfer;

(15) *Limitations on distributions.* RUS approval for a borrower to declare or pay dividends, pay or determine to pay patronage refunds, retire patronage capital, or make any other cash distributions, if the following conditions are met:

(i) After giving effect to the distribution, the borrower's equity will be greater than or equal to 30 percent of its total assets;

(ii) The borrower is current on all payments due on all notes secured under the mortgage;

(iii) The borrower is not otherwise in default under its loan documents; and

(iv) After giving effect to the distribution, the borrower's current and accrued assets will be not less than its current and accrued liabilities.

(d) *RUS requirements and operational controls not exempted.* All requirements and operational controls contained in the RUS mortgage and loan contract, or otherwise imposed on borrowers pursuant to statute or regulation, that are not specifically listed in paragraph (c) of this section are not exempted and shall continue to apply according to their terms. Examples of such requirements and controls not exempted are listed in this paragraph for the convenience of the public. This list is not exhaustive, and the absence of a requirement or control from this list in no way means that the requirement or control has been exempted:

(1) Requirements and operational controls contained in the RUS mortgage or loan contract that are necessary to ensure that the security for loans made or guaranteed by RUS is reasonably adequate and that the loans will be repaid, or to accomplish other fundamental purposes of the RE Act. Some of these also represent terms and conditions with respect to the use by borrowers of the proceeds of loans made or guaranteed by RUS. Together, these controls include, but are not limited to, the following:

(i) Area coverage requirements set forth in the loan contract and in § 1710.103;

(ii) Requirement that certain borrowers maintain, on an ongoing basis, a power requirements study and a power requirements study work plan, as set forth in §§ 1710.201 and 1710.202;

(iii) Requirement that borrowers follow RUS construction standards and use RUS accepted materials, as set forth in § 1710.41, § 1710.45, and 7 CFR part 1728;

(iv) Requirement that borrowers maintain, on an ongoing basis, a long-range engineering plan and a construction work plan, as set forth in § 1710.250(b);

(v) Requirement that borrowers set rates for electric service sufficient to maintain certain coverage ratios, as set forth in § 1710.114;

(vi) Certain RUS approvals of retirements of capital credits in excess of amounts specifically authorized in the mortgage;

(vii) RUS approval of borrower investments, loans, guarantees, and other obligations under 7 CFR part 1717, subpart N;

(viii) RUS requirements on accounting, auditing, irregularities, financial reporting, and access to books and records;

(ix) Requirement that borrowers record the mortgage and mortgage amendments;

(x) Requirement that the mortgagor maintain and preserve the priority lien of the mortgage and defend title to the mortgaged property;

(xi) Requirements on maintenance and repair of the mortgaged property;

(xii) Requirements on insurance of the mortgaged property; and

(xiii) Certain RUS approvals of borrower mergers and consolidations; and

(2) Requirements imposed on borrowers pursuant to statute or regulation and not specifically exempted by paragraph (c) of this section. See, for example, §§ 1710.122 through 1710.127.

(e) *Rescission of exemptions if borrower defaults.* If a borrower is in default with respect to any requirement of its mortgage, loan contract with RUS, or any other agreement with RUS that has not been exempted pursuant to paragraph (c) of this section or other RUS regulations, upon written notice to the borrower RUS may rescind all or any part of the exemptions granted pursu-

ant to paragraph (c) of this section or other RUS regulations. The reinstated requirements and controls will remain in effect until RUS determines that they are no longer needed to help ensure that the security, including the assurance of repayment, for loans made or guaranteed by RUS will remain reasonably adequate.

(f) *Reinstated controls.* If RUS controls are reinstated because the borrower defaults or its net worth falls below 110 percent of RUS debt, such controls and approval rights will apply to all applicable subsequent actions of the borrower, including without limitation the amendment of contracts that the borrower entered into while eligible for an exemption under this section.

[60 FR 67401, Dec. 29, 1995, as amended at 62 FR 27930, May 22, 1997]

#### §§ 1710.8—1710.49 [Reserved]

### Subpart B—Types of Loans and Loan Guarantees

#### § 1710.50 Insured loans.

RUS makes insured loans under section 305 of the RE Act.

(a) *Municipal rate loans.* The standard interest rate on an insured loan made on or after November 1, 1993, is the municipal rate, which is the rate determined by the Administrator to be equal to the current market yield on outstanding municipal obligations with remaining periods to maturity, up to 35 years, similar to the interest rate term selected by the borrower. In certain cases, an interest rate cap of 7 percent may apply. The interest rate term and rollover maturity date for a municipal rate loan will be determined pursuant to 7 CFR part 1714, and the borrower may elect to include in the loan documents a prepayment option (call provision).

(b) *Hardship rate loans.* RUS makes hardship rate loans at the 5 percent hardship rate to qualified borrowers meeting the criteria set forth in 7 CFR 1714.8

[58 FR 66263, Dec. 20, 1993]

#### § 1710.51 Loan guarantees.

RUS provides financing through 100 percent loan guarantees made under

sections 306 and 306A of the RE Act. RUS also provides 90 percent loan guarantees under section 311 of the RE Act to enable borrowers to secure financing from certain private lenders. The loan guarantees are made for a term of up to 35 years, and the interest rate is established at a rate agreed to by the borrower and the lender, with RUS concurrence. The guarantee applies to the repayment of both principal and interest.

[58 FR 66264, Dec. 20, 1993]

**§§ 1710.52—1710.99 [Reserved]**

**Subpart C—Loan Purposes and Basic Policies**

**§ 1710.100 General.**

RUS makes loans and loan guarantees to finance the construction of electric distribution, transmission and generation facilities, including system improvements and replacements required to furnish and improve electric service in rural areas, and for demand side management, energy conservation programs, and on grid and off grid renewable energy systems. In some circumstances, RUS may finance selected operating expenses of its borrowers. Loans made or guaranteed by the Administrator of RUS will be made in conformance with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), and 7 CFR chapter XVII. RUS provides certain technical assistance to borrowers when necessary to aid the development of rural electric service and to protect loan security.

[58 FR 66264, Dec. 20, 1993]

**§ 1710.101 Types of eligible borrowers.**

(a) RUS makes loans to corporations, states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide:

- (1) The retail electric service needs of rural areas, or
- (2) The power supply needs of distribution borrowers under the terms of power supply arrangements satisfactory to RUS.

(b) In making loans, RUS gives preference to states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, or limited-dividend associations. RUS does not make loans to individual consumers.

(c) For the purpose of determining eligibility of a distribution borrower not in default on the repayment of a loan made or guaranteed under the RE Act for a loan, loan guarantee, or lien accommodation, a default by a borrower from which a distribution borrower purchases wholesale power shall not:

- (1) Be considered a default by the distribution borrower;
- (2) Reduce the eligibility of the distribution borrower for assistance under the RE Act; or
- (3) Be the cause, directly or indirectly, of imposing any requirement or restriction on the borrower as a condition of the assistance, except such requirements or restrictions as are necessary to implement a debt restructuring agreed on by the power supply borrower and RUS.

(d) For the purpose of determining the eligibility of a distribution borrower, RUS will consider whether the distribution borrower is current on its obligations to its wholesale power supplier under the RUS wholesale power contract.

(e) Nothing in paragraph (c) of this section relieves any distribution borrower that is a member of a power supply borrower in default on its obligations to RUS or operating under a debt restructuring agreement, of requirements set forth in RUS regulations, including, without limitation, § 1710.112(b)(6), or of any terms and conditions that the Administrator may otherwise impose on any borrower as a condition of obtaining a loan or loan guarantee (including, in appropriate cases, member guarantees).

(f) Except as provided in paragraph (g) of this section, former borrowers that have paid off all outstanding loans may reapply for a loan to serve RE Act beneficiary loads accruing from the time the former borrower's complete loan application is received by RUS. The determination of whether an area is rural will be based on the Census

designation of the area at the time of the reapplication for a loan, if the area is not served by electric facilities financed by RUS. If the area is served by electric facilities financed by RUS, it will continue to be considered rural.

(g) Former borrowers that have prepaid all, or portions of outstanding insured and direct loans in accordance with RUS regulations must comply with the provisions of 7 CFR part 1786 before being considered eligible to borrow additional funds from RUS.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992. Revised and redesignated at 58 FR 66264, Dec. 20, 1993]

**§ 1710.102 Borrower eligibility for different types of loans.**

(a) *Insured loans under section 305.* Insured loans are normally reserved for the financing of distribution and subtransmission facilities of both distribution and power supply borrowers, including, under certain circumstances, the implementation of demand side management, energy conservation programs, and on grid and off grid renewable energy systems. In accordance with § 1710.110, the Administrator may require the borrower to obtain no more than 30 percent of the total debt financing required for a proposed project by means of a supplemental loan from another lender without an RUS guarantee.

(b) *One hundred percent loan guarantees under section 306.* Both distribution and power supply borrowers are eligible for 100 percent loan guarantees under section 306 of the RE Act for any or all of the purposes set forth in § 1710.106, including, under certain circumstances, the implementation of demand side management, energy conservation programs, and on grid and off grid renewable energy systems. (See 7 CFR part 1712). These guarantees are normally used to finance bulk transmission and generation facilities, but they may also be used to finance distribution and subtransmission facilities. If a borrower applies for a section 306 loan guarantee to finance all or a portion of distribution and subtransmission facilities, such request will not affect the borrower's eligibility for an insured loan to finance any remaining portion of said facilities or for any fu-

ture insured loan to finance other distribution or subtransmission facilities. A section 306 loan guarantee, however, may not be used to guarantee a supplemental loan required by § 1710.110.

(c) *One hundred percent loan guarantees under section 306A.* Under section 306A of the RE Act, both distribution and power supply borrowers are eligible under certain conditions to use an existing section 306 guarantee to refinance advances made on or before July 2, 1986 from a loan made by the Federal Financing Bank. (See 7 CFR part 1786.)

(d) [Reserved]

(e) *Ninety percent guarantees of private-sector loans under section 311.* Under section 311 of the RE Act, both distribution and power supply borrowers in the state of Alaska are eligible under certain conditions to obtain from RUS a 90 percent guarantee of a private-sector loan to refinance their Federal Financing Bank loans. (See 7 CFR part 1786.)

[57 FR 2832, Jan. 24, 1992, as amended at 58 FR 66264, Dec. 20, 1993]

**§ 1710.103 Area coverage.**

(a) Borrowers shall make a diligent effort to extend electric service to all unserved persons within their service area who:

(1) Desire electric service; and

(2) Meet all reasonable requirements established by the borrower as a condition of service.

(b) If economically feasible and reasonable considering the cost of providing such service and/or the effects on all consumers' rates, such service shall be provided, to the maximum extent practicable, at the rates and minimum charges established in the borrower's rate schedules, without the payment by such persons, other than seasonal or temporary consumers, of a contribution in aid of construction. A seasonal consumer is one that demands electric service only during certain seasons of the year. A temporary consumer is a seasonal or year-round consumer that demands electric service over a period of less than five years.

(c) Borrowers may assess contributions in aid of construction provided

such assessments are consistent with the policy set forth in this section.

[57 FR 1053, Jan. 9, 1992, as amended at 60 FR 67404, Dec. 29, 1995]

**§ 1710.104 Service to non-RE Act beneficiaries.**

(a) To the greatest extent practical, loans are limited to providing and improving electric facilities to serve consumers that are RE Act beneficiaries. When it is determined by the Administrator to be necessary in order to furnish or improve electric service in rural areas, loans may, under certain circumstances, be made to finance electric facilities to serve consumers that are not RE Act beneficiaries.

(b) Loan funds may be approved for facilities to serve non-RE Act beneficiaries only if:

(1) The primary purpose of the loan is to furnish or improve service for RE Act beneficiaries; and

(2) The use of loan funds to serve non-RE Act beneficiaries is necessary and incidental to the primary purpose of the loan.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992, as amended at 58 FR 66264, Dec. 20, 1993]

**§ 1710.105 State regulatory approvals.**

(a) In States where a borrower is required to obtain approval of a project or its financing from a state regulatory authority, RUS may require that such approvals be obtained, if feasible for the borrower to do so, before the following types of loans are approved by RUS:

(1) Loans requiring an Environmental Impact Statement;

(2) Loans to finance generation and transmission facilities, when the loan request for such facilities is \$25 million or more; and

(3) Loans for the purpose of assisting borrowers to implement demand side management and energy conservation programs and on and off grid renewable energy systems.

(b) At minimum, in the case of all loans in states where state regulatory approval is required of the project or its financing, such state approvals will be required before loan funds are advanced.

(c) In cases where state regulatory authority approval has been obtained,

but the borrower has failed to proceed with the project in a timely manner according to the schedule contained in the borrower's project design manual, or if there are cost overruns or other developments that threaten loan feasibility or security, RUS may require the borrower to obtain a reaffirmation of the project and its financing from the state authority before any additional loan funds are advanced.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992, as amended at 58 FR 66265, Dec. 20, 1993]

**§ 1710.106 Uses of loan funds.**

(a) Funds from loans made or guaranteed by RUS may be used to finance:

(1) *Distribution facilities.* (i) The construction of new distribution facilities or systems and the cost of system improvements and removals, less salvage value, needed to meet load growth requirements or improve the quality of service.

(ii) The purchase, rehabilitation and integration of existing distribution facilities and associated service territory when the acquisition is an incidental and necessary means of providing or improving service to persons in rural areas who are not receiving adequate central station service, and the borrower is unable to finance the acquisition from other sources. See § 1710.107.

(2) *Transmission and generation facilities.* (i) The construction of new transmission and generation facilities or systems and the cost of system improvements and removals, less salvage value, needed to meet load growth and improve the quality of service.

(ii) The purchase of an ownership interest in new or existing transmission or generation facilities to serve RE Act beneficiaries.

(3) *Ordinary plant replacements.* The excess of the total cost of ordinary replacements over the original cost of the facilities being replaced, unless financing of the total cost is specifically authorized by the Administrator.

(4) *Warehouse and garage facilities.* The purchase, remodeling, or construction of warehouse and garage facilities required for the operation of a borrower's system. See paragraph (b) of this section.

(5) *Interest.* The payment of interest on indebtedness incurred by a borrower

to finance the construction of generation and transmission facilities during the period preceding the date such facilities are placed into service, if requested by the borrower and found necessary by RUS.

(6) Certain costs incurred in demand side management, energy conservation programs and on and off grid renewable energy systems.

(b) In cases of financial hardship, as determined by the Administrator, loans may also be made to finance the following items:

(1) The headquarters office and other headquarters facilities in addition to those cited in paragraph (a)(4) of this section;

(2) General plant equipment, including furniture, office, transportation, data processing and other work equipment; and

(3) Working capital required for the initial operation of a new system.

(c) RUS will not make loans to finance the following:

(1) Electric facilities, equipment, appliances, or wiring located inside the premises of the consumer, except qualifying items included in a loan for demand side management or energy resource conservation programs, or on or off grid renewable energy systems;

(2) Facilities to serve consumers who are not RE Act beneficiaries unless those facilities are necessary and incidental to providing or improving electric service in rural areas (See § 1710.104);

(3) Any facilities or other purposes that a state regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base, or will not otherwise allow rates sufficient to repay with interest the debt incurred for the facilities or other purposes; and

(4) Any facilities or other specific purposes that were included in a loan made or guaranteed by RUS that the borrower has prepaid or that has been rescinded.

(d) A distribution borrower may request a loan period of up to 4 years. Except in the case of loans for new generating and associated transmission facilities, a power supply borrower may request a loan period of not more than 4 years for transmission and substation

facilities and improvements or replacements of generation facilities. The loan period for new generating facilities is determined on a case by case basis. The loan period for DSM activities will be determined in accordance with § 1710.355. The Administrator may approve a loan period shorter than the period requested by the borrower, if in the Administrator's sole discretion, a loan made for the longer period would fail to meet RUS requirements for loan feasibility and loan security set forth in §§ 1710.112 and 1710.113, respectively.

(e)(1) If, in the sole discretion of the Administrator, the amount authorized for lending for municipal rate loans, hardship rate loans, and loan guarantees in a fiscal year is substantially less than the total amount eligible for RUS financing, RUS may limit the size of all loans of that type approved during the fiscal year. Depending on the amount of the shortfall between the amount authorized for lending and the loan application inventory on hand for each type of loan, RUS may either reduce the amount on an equal proportion basis for all applicants for that type of loan based on the amount of funds for which the applicant is eligible, or may shorten the loan period for which funding will be approved to less than the maximum of 4 years. All applications for the same type of loan approved during a fiscal year will be treated in the same manner, except that RUS will not limit funding to any borrower requesting an RUS loan or loan guarantee of \$1 million or less.

(2) If RUS limits the amount of loan funds approved for borrowers, the Administrator shall notify all electric borrowers early in the fiscal year of the manner in which funding will be limited. The portion of the loan application that is not funded during that fiscal year may, at the borrower's option, be treated as a second loan application received by RUS at a later date. This date will be determined by RUS in the same manner for all affected loans and will be based on the availability of loan funds. The second loan application shall be considered complete except that the borrower must submit a certification from a duly authorized corporate official stating that funds are still needed for loan purposes specified

in the original application and must notify RUS of any changes in its circumstances that materially affects the information contained in the original loan application or the primary support documents. See 7 CFR 1710.401(f).

(f)(1) For borrowers having one or more loans approved on or after October 1, 1991, advances of funds will be made only for the primary budget purposes included in the loan as shown on RUS Form 740c as amended and approved by RUS, or on a construction work plan or a construction work plan amendment approved by RUS. Each advance will be charged to the oldest outstanding note(s) having unadvanced funds for the primary budget purpose for which the request for advances was made, regardless of whether such notes are associated with loans approved before or after October 1, 1991, unless any conditions on advances under any of these notes have not been met by the borrower.

(2) For borrowers whose most recent loan was approved before October 1, 1991, advances will be made on the oldest outstanding note having unadvanced funds, unless any conditions on advances under such note have not been met by the borrower.

[57 FR 1053, Jan. 9, 1992, as amended at 58 FR 66265, Dec. 20, 1993; 60 FR 3730, Jan. 19, 1995; 62 FR 7922, Feb. 21, 1997]

#### **§ 1710.107 Amount lent for acquisitions.**

The maximum amount that will be lent for an acquisition is limited to the value of the property, as determined by RUS. If the acquisition price exceeds this amount, the borrower shall provide the remainder without RUS financial assistance.

#### **§ 1710.108 Mergers and consolidations.**

(a) RUS encourages its borrowers to consider merging or consolidating with another electric borrower when such action will contribute to greater operating efficiency and financial soundness.

(b) After a merger or consolidation, RUS will give priority consideration per § 1710.119 to the processing of loans for the surviving system to finance the integration and rehabilitation of electric facilities, if necessary, and the im-

provement or extension of electric service in rural areas. Such priority consideration will also be given in the case of a borrower that has merged or consolidated with an electric system that has not previously received RUS financial assistance, if such system was serving primarily rural residents at the time of the merger or consolidation and such rural residents will continue to be served by the merged or consolidated system. RUS does not make loans for costs incurred in effectuating mergers or consolidations, such as legal expenses or feasibility study costs.

#### **§ 1710.109 Reimbursement of general funds and interim financing.**

(a) Borrowers may request that a loan include funds to reimburse general funds and/or replace interim financing used to finance equipment and facilities that were included in an RUS-approved construction work plan, work plan amendment or other RUS-approved plan, and for which loan funds have not been provided by RUS. Such reimbursement and/or replacement of interim financing may include the direct costs of procurement and construction, as well as the related cost of engineering, architectural, environmental and other studies and plans needed to support the project, when such cost is capitalized as part of the cost of the facilities.

(b) If procurement and/or construction of the equipment and facilities was completed prior to the current loan period, reimbursement, including replacement of interim financing, will be limited, except in cases of extreme financial hardship as determined by the Administrator, to the cost of procurement and construction completed during the period immediately preceding the current loan period, as specified in paragraph (c) of this section. As defined in § 1710.2, the loan period begins on the date shown on page 1 of RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers.

(c)(1) The period immediately preceding the current loan period for which reimbursement and replacement of interim financing is authorized under paragraph (b) of this section is as follows:

(i) The number of months agreed to by RUS and the borrower for complete loan applications received by RUS before February 10, 1992;

(ii) 36 months for complete loan applications received from February 10, 1992 through February 10, 1993; or

(iii) 24 months for complete loan applications received after February 10, 1993.

(2) Policies for reimbursement of general funds and interim financing following certain mergers, consolidations, and transfers of systems substantially in their entirety are set forth in 7 CFR 1717.154.

(d) If the reimbursement of general funds and/or replacement of interim financing is for approved expenditures for equipment and facilities whose procurement and/or construction is completed during the current loan period, the time limits of paragraph (c) of this section do not apply.

[57 FR 1053, Jan. 9, 1992, as amended at 58 FR 66265, Dec. 20, 1993; 61 FR 66870, Dec. 19, 1996]

#### § 1710.110 Supplemental financing.

(a) Except in the case of financial hardship as determined by the Administrator, and following certain mergers, consolidations, and transfers of systems substantially in their entirety as set forth in 7 CFR 1717.154, applicants for a municipal rate loan will be required to obtain a portion of their loan funds from a supplemental source without an RUS guarantee, in the amounts set forth in paragraph (c) of this section. RUS will normally grant a lien accommodation to the supplemental lender. RUS does not require supplemental financing in conjunction with an RUS guaranteed loan. However, if a borrower elects to obtain supplemental financing in conjunction with a guaranteed loan, the granting of RUS's loan guarantee may be conditioned on the borrower's obtaining supplemental financing.

(b) The terms and conditions of supplemental financing and any security offered to the supplemental lender are subject to RUS approval. Generally, supplemental loans must have the same final maturity and be amortized in the same manner as RUS loans made concurrently. Borrowers may elect to repay the loans either in substantially

equal periodic installments covering interest and principal, or in periodic installments that include interest and level amortization of principal.

(c) *Supplemental financing required for municipal rate loans*—(1) *Distribution borrowers.* (i) Distribution borrowers that had, as of December 31, 1980, an average consumer density of 2 or fewer consumers per mile or an average adjusted plant revenue ratio (APRR), as defined in § 1710.2, of over 9.0 shall obtain supplemental financing equal to 10 percent of their loan request.

(ii) All other distribution borrowers must obtain supplemental financing according to their plant revenue ratio (PRR), as defined in § 1710.2, based on the most recent year-end data available on the date of loan approval, as follows:

PRR	Supplemental loan percentage
9.00 and above .....	10
8.01–8.99 .....	20
8.00 and below .....	30

(iii) If a distribution borrower enters into a merger, consolidation, or transfer of system substantially in its entirety, and the provisions of 7 CFR 1717.154(b) do not apply, required supplemental financing will be determined as follows for loans approved by RUS after December 19, 1996. If one of the merging parties met the criteria in paragraph (c)(1)(i) of this section prior to the effective date of the merger consolidation or transfer, the borrower will be required to obtain supplemental financing equal to 10 percent of any loan funds requested for facilities to serve consumers located in the territory formerly served by the "paragraph (c)(1)(i)" borrower. The required amount of supplemental financing for the rest of the loan will be determined according to the provisions of paragraph (c)(1)(ii) of this section.

(2) *Power supply borrowers.* The supplemental loan proportion required of a power supply borrower is based on the simple arithmetic mean of the supplemental loan proportions required of the borrower's distribution members.

(3) *Subsequent loans.* (i) If more than 5 percent of an insured loan made prior to November 1, 1993, or of a municipal rate loan is terminated or rescinded,

the amount of supplemental financing required in the borrower's next loan after the rescission for which supplemental financing is required, pursuant to paragraph (a) of this section, will be adjusted to average the actual supplemental financing portion on the terminated or rescinded loan with the supplemental financing portion that would have been required on the new loan according to paragraphs (c)(1) and (2) of this section, in accordance with the formulas set forth in paragraphs (c)(3)(ii) and (iii) of this section.

(ii) If a borrower's supplemental financing requirement as set forth in paragraphs (a), (c)(1), and (c)(2) of this section has not changed between the most recent loan and the loan being considered, then the amount of supplemental financing required for the new loan will be computed as follows:

Supplemental financing amount, new loan =  $[(A + B) \times C] - D$

where:

A = The total funds (\$) actually advanced from the first loan, including both RUS loan funds and funds from the supplemental loan, plus any unadvanced funds still available to the borrower after the rescission.

B = The total amount (\$) for facilities of the new loan request, including both RUS loan funds and funds from supplemental loans.

C = The proportion (%) of supplemental financing required on the loans according to paragraphs (a), (c)(1) and (c)(2) of this section.

D = The amount (\$) of supplemental funds actually advanced on the first loan, plus any unadvanced supplemental funds still available to the borrower after the rescission.

(iii) If a borrower's supplemental financing requirement as set forth in paragraphs (a), (c)(1), and (c)(2) of this section has changed between the most recent loan and the loan being considered, then the amount of supplemental financing required for the new loan will be the weighted average of the portions otherwise applicable on the two loans and will be computed as follows:

Supplemental financing amount, new loan =  $(A \times C_1) + (B \times C_2) - D$

where:

A = The total funds (\$) actually advanced from the first loan, including both RUS loan funds and funds from the supplemental loan, plus any unadvanced funds

still available to the borrower after the rescission.

B = The total amount (\$) for facilities of the new loan request, including both RUS funds and funds from supplemental loans.

C<sub>1</sub> = The proportion (%) of supplemental financing required on the old loan according to paragraphs (a), (c)(1) and (c)(2) of this section.

C<sub>2</sub> = The proportion (%) of supplemental financing required on the new loan according to paragraphs (a), (c)(1) and (c)(2) of this section.

D = The amount (\$) of supplemental funds actually advanced on the first loan, plus any unadvanced supplemental funds still available to the borrower after the rescission.

(d) Supplemental financing will not be required in connection with hardship rate loans. Borrowers that qualify for hardship rate loans but elect to take municipal rate loans instead, will be required to obtain supplemental financing pursuant to this section, unless at the time of loan approval, there are no funds remaining available for hardship loans, in which case supplemental financing will not be required.

[57 FR 1053, Jan. 9, 1992, as amended at 58 FR 66265, Dec. 20, 1993; 60 FR 3730, Jan. 19, 1995; 61 FR 66870, Dec. 19, 1996]

#### § 1710.111 Refinancing.

(a) RUS makes loans or loan guarantees to refinance the outstanding indebtedness of borrowers in the following cases:

(1) Loans or loan guarantees to refinance long-term debt owed by borrowers to the Tennessee Valley Authority for credit extended under the terms of the Tennessee Valley Authority Act of 1933, as amended.

(2) Loan guarantees made in accordance with the provisions of section 306A of the RE Act to prepay a loan (or any loan advance thereunder) made by the Federal Financing Bank.

(b) In certain circumstances, RUS may make a loan to replace interim financing obtained for the construction of facilities (See § 1710.109).

#### § 1710.112 Loan feasibility.

(a) RUS will make a loan only if there is reasonable assurance that the loan, together with all outstanding

loans and other obligations of the borrower, will be repaid in full as scheduled, in accordance with the mortgage, notes, and loan contracts. The borrower must provide evidence satisfactory to the Administrator that the loan will be repaid in full as scheduled, and that all other obligations of the borrower will be met.

(b) Based on evidence submitted by the borrower and other information, RUS will use the following criteria to evaluate loan feasibility:

(1) Projections of power requirements, rates, revenues, expenses, margins, and other factors for the present system and proposed additions are based on reasonable assumptions and adequate supporting data and analysis, including analysis of a range of assumptions for the significant variables, when required by § 1710.300(d)(5).

(2) Projected revenues from the rates proposed by the borrower are adequate to meet the required TIER and DSC ratios based on the borrower's total costs, including the projected maximum debt service cost of the new loan.

(3) The economics of the borrower's operations and service area are such that consumers can reasonably be expected to pay the proposed rates required to cover all expenses and meet RUS TIER and DSC requirements, and the borrower can reasonably compete with other utilities and other energy sources to prevent substantial load loss while providing satisfactory service to its consumers.

(4) Risks of possible loss of substantial loads from large consumers or from load concentrations in particular industries will not substantially impair loan feasibility.

(5) Risks of loss of portions of the borrower's service territory from annexation or other causes will not substantially impair loan feasibility. If there appears to be a substantial risk, RUS may require additional information from the borrower, such as a summary and analysis of the risk by the borrower; state, county or local planning reports having information on projected growth or expansion plans of local communities; annexation plans of the municipalities in question; and any other relevant information.

(6) In states where rates or investment decisions are subject to approval by state regulatory authorities, there is reasonable expectation that such approvals will be forthcoming to enable repayment of the loan in full according to its terms.

(7) The experience and performance of the system's management is acceptable.

(8) In the case of joint ventures, the borrower has sufficient management control or other contractual safeguards with respect to the construction and operation of the jointly owned facility to ensure that the borrower's interests are protected and the credit risk is minimized.

(9) The borrower has implemented adequate financial and management controls and there are and have been no significant financial or other irregularities.

(10) The borrower's projected capitalization, measured by its equity as a percentage of total assets, is adequate to enable the borrower to meet its financial needs and to provide service consistent with the RE Act. Among the factors to be considered in reviewing the borrower's projected capitalization are the economic strength of the borrower's service territory, the inherent cost of providing service to the territory, the disparity in rates between the borrower and neighboring utilities, the intensity of competition faced by the borrower from neighboring utilities and other power sources, and the relative amount of new capital investment required to serve existing or new loads.

(c) RUS considers a loan to be feasible only if the borrower's electric system is year 2000 compliant, or if the borrower provides RUS with evidence, satisfactory to RUS, that it is taking measures necessary to ensure that its electric system will be year 2000 compliant on or before December 31, 1999. Year 2000 compliant means that product performance and function are not affected by dates before, during, and a reasonable time after the year 2000.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992, as amended at 60 FR 3731, Jan. 19, 1995; 63 FR 51793, Sept. 29, 1998]

**§ 1710.113 Loan security.**

(a) RUS makes loans only if, in the judgment of the Administrator, the security therefor is reasonably adequate and the loan will be repaid according to its terms within the time agreed.

(b) RUS generally requires that borrowers provide it with a first lien on all of the borrower's real and personal property, including intangible personal property and any property acquired after the date of the loan. This lien shall be in the form of a mortgage by the borrower to the Government or a deed of trust between the borrower and a trustee satisfactory to the Administrator, together with such security documents as RUS may deem necessary in a particular case.

(c)(1) When a borrower is unable by reason of preexisting encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may accept other forms of security, such as a pledge of revenues, if he or she determines such security is reasonably adequate and the form and nature thereof is otherwise acceptable.

(2) The Administrator, at his or her discretion, may approve the use of an indenture patterned after those indentures commonly used by utilities engaged in private market financing, in lieu of a mortgage as the security instrument for loans to power supply borrowers. The use of an indenture will be by mutual agreement of the borrower and the Administrator. The terms of each indenture and related loan agreement will be negotiated on a case by case basis to best meet the needs of the individual borrower and the Government. The provisions of the indenture and loan contract shall control, notwithstanding any provisions of 7 CFR Chapter XVII which may be in conflict therewith.

(d) In the case of loans that include the financing of electric facilities that are operated as an integral component of a non-RUS financed system (such as generation and transmission facilities co-owned with other electric utilities), the borrower shall, in addition to the mortgage lien on all of the borrower's electric facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that the system will be operated on an efficient

and continuous basis. Satisfactory evidence must also be provided that the non-RUS financed system is financially sound and under capable management. Examples of such evidence include financial reports, annual reports, Security and Exchange Commission 10K reports if the system is required to file them, credit reports from Standard and Poor's, Moodys or other recognized sources, reports to state regulatory authorities and the Federal Energy Regulatory Commission, and evidence of a successful track record in related construction projects.

(e) Additional controls on the borrower's financial, investment and managerial activities appear in the loan contract and mortgage required by RUS.

[57 FR 1053, Jan. 9, 1992, as amended at 62 FR 7665, Feb. 20, 1997]

**§ 1710.114 TIER, DSC, OTIER and ODSC requirements.**

(a) *General.* Requirements for coverage ratios are set forth in the borrower's mortgage, loan contract, or other contractual agreements with RUS. The requirements set forth in this section apply to borrowers that receive a loan approved by RUS on or after February 10, 1992. Nothing in this section, however, shall reduce the coverage ratio requirements of a borrower that has contractually agreed with RUS to a higher requirement.

(b) *Coverage ratios.* (1) Distribution borrowers. The minimum coverage ratios required of distribution borrowers, whether applied on an annual or average basis, are a TIER of 1.50, DSC of 1.25, OTIER of 1.1, and ODSC of 1.1. OTIER and ODSC shall apply to distribution borrowers that receive a loan approved by RUS on or after January 29, 1996.

(2) The minimum coverage ratios required of power supply borrowers, whether applied on an annual or average basis, are a TIER of 1.05 and DSC of 1.00.

(3) When new loan contracts are executed, the Administrator may, case by case, increase the coverage ratios of distribution and power supply borrowers above the levels cited in paragraphs (b)(1) and (b)(2), respectively, of

this section if the Administrator determines that the higher ratios are required to ensure reasonable security for and/or the repayment of loans made or guaranteed by RUS. Also, the Administrator may, case by case, reduce said coverage ratios if the Administrator determines that the lower ratios are required to ensure reasonable security for and/or the repayment of loans made or guaranteed by RUS. Policies for coverage ratios following certain mergers, consolidations, and transfers of systems substantially in their entirety are in 7 CFR 1717.155.

(4) If a distribution borrower has in service or under construction a substantial amount of generation and associated transmission plant financed at a cost of capital substantially higher than the cost of funds under section 305 of the RE Act, then the Administrator may establish, in his or her sole discretion, blended levels for TIER, DSC, OTIER, and ODSC based on the respective shares of total utility plant represented by said generation and associated transmission plant and by distribution and other transmission plant.

(c) *Requirements for loan feasibility.* To be eligible for a loan, borrowers must demonstrate to RUS that they will, on a pro forma basis, earn the coverage ratios required by paragraph (b) of this section in each of the years included in the borrower's long-range financial forecast prepared in support of its loan application, as set forth in subpart G of this part.

(d) *Requirements for maintenance of coverage ratios—(1) Prospective requirement.* Borrowers must design and implement rates for utility service to provide sufficient revenue (along with other revenue available to the borrower in the case of TIER and DSC) to pay all fixed and variable expenses, to provide and maintain reasonable working capital and to maintain on an annual basis the coverage ratios required by paragraph (b) of this section. Rates must be designed and implemented to produce at least enough revenue to meet the requirements of this paragraph under the assumption that average weather conditions in the borrower's service territory will prevail in the future, including average system damage and outages due to weather

and the related costs. Failure to design and implement rates pursuant to the requirements of this paragraph shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage or loan contract.

(2) *Retrospective requirement.* The average coverage ratios achieved by a borrower in the 2 best years out of the 3 most recent calendar years must meet the levels required by paragraph (b) of this section. If a borrower fails to achieve these average levels, it must promptly notify RUS in writing. Within 30 days of such notification or of the borrower being notified in writing by RUS, whichever is earlier, the borrower, in consultation with RUS, must provide a written plan satisfactory to RUS setting forth the actions that will be taken to achieve the required coverage ratios on a timely basis. Failure to develop and implement a plan satisfactory to RUS shall be an event of default upon notice provided in accordance with the terms of the borrower's mortgage or loan contract.

(3) *Fixed and variable expenses,* as used in this section, include but are not limited to: all taxes, depreciation, maintenance expenses, and the cost of electric power and energy and other operating expenses of the electric system, including all obligations under the wholesale power contract, all lease payments when due, and all principal and interest payments on outstanding indebtedness when due.

(e) *Requirements for advance of funds.* (1) If a borrower applying for a loan has failed to achieve the coverage ratios required by paragraph (b) of this section during the latest 12 month period immediately preceding approval of the loan, or if any of the borrower's average coverage ratios for the 2 best years out of the most recent 3 calendar years were below the levels required in paragraph (b) of this section, RUS may withhold the advance of loan funds until the borrower has adopted an annual financial plan and operating budget satisfactory to RUS and taken such other action as RUS may require to demonstrate that the required coverage ratios will be maintained in the future and that the loan will be repaid with interest within the time agreed.

Such other action may include, for example, increasing system operating efficiency and reducing costs or adopting a rate design that will achieve the required coverage ratios, and either placing such rates into effect or taking action to obtain regulatory authority approval of such rates. If failure to achieve the coverage ratios is due to unusual events beyond the control of the borrower, such as unusual weather, system outage due to a storm or regulatory delay in approving rate increases, then the Administrator may waive the requirement that the borrower take the remedial actions set forth in this paragraph, provided that such waiver will not threaten loan feasibility.

(2) With respect to any outstanding loan approved by RUS on or after February 10, 1992, if, based on actual or projected financial performance of the borrower, RUS determines that the borrower may not achieve its required coverage ratios in the current or future years, RUS may withhold the advance of loan funds until the borrower has taken remedial action satisfactory to RUS.

[60 FR 67404, Dec. 29, 1995, as amended at 61 FR 66871, Dec. 19, 1996]

#### **§ 1710.115 Final maturity.**

(a) RUS is authorized to make loans and loan guarantees with a final maturity of up to 35 years. The borrower may elect a repayment period for a loan not longer than the expected useful life of the facilities, not to exceed 35 years. Most of the electric facilities financed by RUS have a long useful life, often approximating 35 years. Some facilities, such as load management equipment and Supervisory Control and Data Acquisition equipment, have a much shorter useful life due, in part, to obsolescence. Operating loans to finance working capital required for the initial operation of a new system are a separate class of loans and usually have a final maturity of less than 10 years.

(b) Loans made or guaranteed by RUS for facilities owned by the borrower generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The ex-

pected useful life shall be based on the weighted average of the useful lives that the borrower proposes for the facilities financed by the loan, provided that the proposed useful lives are deemed appropriate by RUS. RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, submitted as part of the loan application must include, as a note, either a statement certifying that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or a schedule showing the costs and useful life of those facilities with a useful life of less than 33 years. The useful lives proposed by the borrower for the facilities financed must be consistent with the borrower's proposed depreciation rates for these facilities. In states where the borrower must obtain state regulatory authority approval of depreciation rates for rate making purposes, the depreciation rates used for the purposes of this paragraph shall be the rates currently approved by the state authority or rates for which the borrower plans to seek state authority approval, provided that these rates are deemed appropriate by RUS. In other states, if the rates proposed by the borrower are not deemed appropriate by RUS, RUS will base expected useful life on the depreciation rates listed in Bulletin 183–1, or its successor, revising such rates as necessary to reflect current industry practice (for availability of bulletins, see § 1710.5.). Final maturities for loans for the implementation of programs for demand side management and energy resource conservation and on and off grid renewable energy sources not owned by the borrower will be determined by RUS. Due to the uncertainty of predictions over an extended period of time, RUS may add up to 2 years to the composite average useful life of the facilities in order to determine final maturity.

(c) [Reserved]

(d) The Administrator may approve a repayment period longer than the expected useful life of the facilities financed, up to 35 years, if a longer final maturity is required to ensure repayment of the loan and loan security is adequate.

(e) The final maturity of a loan established pursuant to the provisions of

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this section shall not be extended as a result of extending loan payments under section 12(a) of the RE Act.

[58 FR 66265, Dec. 20, 1993, as amended at 60 FR 3731, Jan. 19, 1995]

### § 1710.116 [Reserved]

### § 1710.117 Environmental considerations.

Borrowers are required to comply with 7 CFR part 1794, which sets forth applicable requirements of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508); and certain other statutes, regulations and orders. Borrowers must also comply with any other applicable Federal or state environmental laws and regulations.

### § 1710.118 [Reserved]

### § 1710.119 Loan processing priorities.

(a) Generally loans are processed in chronological order based on the date the complete application is received in the Regional office.

(b) The Administrator may give priority to processing loans that are required to meet the following needs:

(1) To restore electric service following a major storm or other catastrophe;

(2) To bring existing electric facilities into compliance with any environmental requirements imposed by Federal or state law that were not in effect at the time the facilities were originally constructed;

(3) To finance the capital needs of borrowers that are the result of a merger, consolidation, or a transfer of a system substantially in its entirety, provided that the merger, consolidation, or transfer has either been approved by RUS or does not need RUS approval pursuant to the borrower's loan documents (See 7 CFR 1717.154); or

(4) To correct serious safety problems, other than those resulting from borrower mismanagement or negligence.

(c) The Administrator may also change the normal order of processing loan applications when it is necessary

to ensure that all loan authority for the fiscal year is utilized.

[57 FR 1053, Jan. 9, 1992, as amended at 61 FR 66871, Dec. 19, 1996]

### § 1710.120 Construction standards and contracting.

Borrowers shall follow all RUS requirements regarding construction work plans, construction standards, approved materials, construction and related contracts, inspection procedures, and bidding procedures.

### § 1710.121 Insurance requirements.

Borrowers are required to comply with certain requirements with respect to insurance and fidelity coverage as set forth in 7 CFR part 1788.

### § 1710.122 Equal opportunity and non-discrimination.

Borrowers are required to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in RUS Bulletins 20-15 and 20-19 or their successors; 7 CFR parts 15 and 15b; and 45 CFR part 90.

### § 1710.123 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension as set forth in 7 CFR part 3017.

### § 1710.124 Uniform Relocation Act.

Borrowers are required to comply with applicable provisions of 49 CFR part 24, which sets forth the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646; 84 Stat. 1894), as amended by the Uniform Relocation Act Amendments of 1987 (Pub. L. 100-17; 101 Stat. 246-256) and the Intermodal Surface Transportation Efficiency Act of 1991.

### § 1710.125 Restrictions on lobbying.

Borrowers are required to comply with certain requirements with respect to restrictions on lobbying activities. See 7 CFR part 3018.

**§ 1710.126 Federal debt delinquency.**

(a) Prior to approval of a loan or advance of funds, a borrower must report to RUS whether or not it is delinquent on any Federal debt, such as Federal income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained, and RUS will take such explanation into consideration in deciding whether to approve the loan or advance of funds.

(b) Applicants for a loan or loan guarantee must also certify that they have been informed of the collection options the Federal government may use to collect delinquent debt.

**§ 1710.127 Drug free workplace.**

Borrowers are required to comply with the Drug Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D) and the Act's implementing regulations (7 CFR part 3017) when a borrower receives a Federal grant or enters into a procurement contract awarded pursuant to the provisions of the Federal Acquisition Regulation (title 48 CFR) to sell to a Federal agency property or services having a value of \$25,000 or more.

**§§ 1710.128–1710.149 [Reserved]****Subpart D—Basic Requirements for Loan Approval****§ 1710.150 General.**

The RE Act and prudent lending practice require that the Administrator make certain findings before approving an electric loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these findings.

**§ 1710.151 Required findings for all loans.**

(a) *Area coverage.* Adequate electric service will be made available to the widest practical number of rural users in the borrower's service area during the life of the loan. See § 1710.103.

(b) *Feasibility.* The loan is feasible and it will be repaid on time according to the terms of the mortgage, note, and loan contract. At any time after the

original determination of feasibility, the Administrator may require the borrower to demonstrate that the loan remains feasible if there have been, or are anticipated to be, material changes in the borrower's costs, loads, rates, rate disparity, revenues, or other relevant factors from the time that feasibility was originally determined. See § 1710.112 and subpart G of this part.

(c) *Security.* RUS will have a first lien on the borrower's total system or other adequate security, and adequate financial and managerial controls will be included in loan documents. See § 1710.113.

(d) *Interim financing.* For loans that include funds to replace interim financing, there is satisfactory evidence that the interim financing was used for purposes approved by RUS and that the loan meets all applicable requirements of this part.

(e) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of electric facilities for non-RE Act beneficiaries, there is satisfactory evidence that such funds are necessary and incidental to furnishing or improving electric service for RE Act beneficiaries. See § 1710.104.

(f) *Facilities to be included in rate base.* In states having jurisdiction, the borrower has provided satisfactory evidence based on the information available, such as an opinion of counsel, that the state regulatory authority will not exclude from the borrower's rate base any of the facilities included in the loan request, or otherwise prevent the borrower from charging rates sufficient to repay with interest the debt incurred for the facilities. Such evidence may be based on, but not necessarily limited to, the provisions of applicable state laws; the rules and policies of the state authority; precedents in other similar cases; statements made by the state authority; any assurances given to the borrower by the state authority; and other relevant information and experience.

**§ 1710.152 Primary support documents.**

The following primary support documents and studies must be prepared by

the borrower for approval by RUS in order to support a loan application:

(a) *Power requirements study (PRS)*. This study provides the borrower and RUS with an understanding of the borrower's system loads, the factors influencing those loads, and valid estimates of future loads. It provides a basis for projecting annual kWh sales and revenues, and for engineering estimates of plant additions required to accommodate the forecasted loads. The requirements for a PRS and the circumstances under which one must be submitted to RUS are set forth in subpart E of this part.

(b) *Construction work plan (CWP)*. The CWP shall specify and document the capital investments required to serve a borrower's planned new loads, improve service reliability and quality, and service the changing needs of existing loads. The requirements for a CWP are set forth in subpart F of this part.

(c) *Long-range financial forecasts*. RUS encourages borrowers to maintain on a current basis a long-range financial forecast, which should be used by a borrower's board of directors and manager to guide the system toward its financial goals. The forecast submitted in support of a loan application shall show the projected results of future actions planned by the board of directors. The requirements for a long-range financial forecast are set forth in subpart G of this part.

(d) *Borrower's environmental report (BER)*. This document is used to determine what effect the construction of the facilities included in the construction work plan will have on the environment. In developing a BER a borrower shall follow the policy and procedural requirements set forth in 7 CFR part 1794. After reviewing the BER, RUS will determine whether additional environmental studies will be required.

#### **§ 1710.153 Additional requirements and procedures.**

Additional requirements and procedures for obtaining RUS financial assistance are set forth in 7 CFR part 1712 for loan guarantees, and in 7 CFR part 1714 for insured loans.

#### **§§ 1710.154—1710.199 [Reserved]**

### **Subpart E—Power Requirements Studies**

#### **§ 1710.200 Purpose.**

This subpart sets forth the policies, procedures and criteria for the preparation, approval and use of power requirements studies (PRSs) and PRS work plans. A PRS is a thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity. The PRS of a power supply borrower includes and integrates the PRSs of its member systems.

#### **§ 1710.201 Requirement to prepare a PRS—power supply borrowers.**

(a) A power supply borrower having total assets of \$300 million or more shall:

(1) Meet one of the following two requirements:

(i) Prepare and obtain RUS approval of a new PRS not less frequently than every 3 years, which shall include new or revised equations and models, and annually update the PRS in the intervening years based on new data and assumptions, but not necessarily new or revised equations and models, and file the annual updates with RUS; or

(ii) Prepare and obtain RUS approval of a new PRS not less frequently than every 2 years, which shall include new or revised equations and models;

(2) Maintain a current PRS work plan approved by RUS which shall set forth the resources, methods, schedules and milestones required for the preparation and maintenance of the PRS; and

(3) Provide a current PRS approved by RUS in support of any request for RUS financial assistance or for RUS approval of long-term power contracts or other actions as appropriate.

(b) A power supply borrower with total assets of less than \$300 million is not required to have a current, RUS-approved PRS on an ongoing basis but is required to provide a current, RUS-approved PRS in support of:

(1) An application for an RUS loan or loan guarantee if said loan or guarantee exceeds \$25 million or 10 percent of the borrower's total utility plant, whichever is smaller; and

(2) Requests for RUS approval of long-term power contracts or other actions, as may be required by RUS on a case by case basis.

(c) A power supply borrower that is a member of another power supply borrower that has total assets of \$300 million or more is subject to the requirements of § 1710.201(a), except that such member is not required to have a separate PRS work plan. The distribution members of such a power supply borrower are also subject to the requirements of § 1710.201(a), except that such members are not required to have separate PRS work plans.

(d) At the borrower's request, RUS may extend for up to 3 months the time frames set forth in § 1710.201(a)(1) if RUS determines the borrower is in substantial compliance with its RUS-approved work plan and significant changes in existing PRS models and assumptions are not required.

(e) For purposes of paragraphs (a)(3) and (b) of this section, the determination of whether a borrower's PRS is current will be made by RUS at the time financial assistance or other RUS action is requested. The borrower may be required to update the PRS to incorporate the most recently available operating data and other information.

**§ 1710.202 Requirement to prepare a PRS—distribution borrowers.**

(a) If a distribution borrower is a member of a power supply borrower that has total assets of \$300 million or more, it must meet the requirements of § 1710.201(a), except for the requirement to prepare a work plan, which is the responsibility of the power supply borrower. Certain other distribution borrowers, as set forth in § 1710.201(c), are also subject to provisions of § 1710.201(a).

(b) All other distribution borrowers, including unaffiliated distribution systems as well as members of power supply borrowers with total assets of less than \$300 million, must either:

(1) Meet the requirements of § 1710.201(a), if the distribution bor-

rower owns generation and bulk transmission plant valued at \$300 million or more, or

(2) Meet the requirements of § 1710.201(b), except that the loan threshold set forth in paragraph (b)(1) in the case of these distribution borrowers shall be \$3 million and 10 percent of total utility plant.

**§ 1710.203 Basic policies and requirements for a PRS.**

(a) A PRS or PRS update must be completed and submitted to RUS on a timely basis to enable prompt review by RUS.

(b) A PRS completed more than 12 months prior to submission will not be considered by RUS.

(c) Adequate coordination is required between power supply borrowers and their members in the preparation of their respective PRSs or PRS updates.

(d) To facilitate RUS review of the PRS work plan and the PRS, the borrower shall make available to RUS appropriate staff for consultation, and all essential documentation, data, and other relevant information, in formats acceptable to RUS, that support the PRS work plan and the PRS.

(e) Notwithstanding any other provisions of this subpart, any power supply or distribution borrower may be required to prepare a new or updated PRS, or to maintain a current PRS on an ongoing basis, if required for RUS to determine loan feasibility, to ensure loan security, or to consider requests submitted for approval under a borrower's loan contract or mortgage.

(f) All PRSs shall include the following information, using a format approved by RUS, unless such information has already been provided to RUS in the PRS work plan or other submissions:

(1) A discussion of the scope of the PRS, including the proposed uses of the information developed for planning load management and energy efficiency programs, plant investments, and financial requirements;

(2) A discussion of the borrower personnel, consultants, data, and other resources used in the preparation of the PRS;

(3) A discussion of the procedures used to collect, validate, process, and update the data used in the study;

(4) Documentation of the analysis and modeling of the borrower's electric system loads and other pertinent information used in the PRS. All relevant data, primary sensitivity analyses and other substantive procedures used to test significant assumptions and to generate the load estimates and related factors must be included in the PRS or otherwise made available to RUS, and clearly identified, sourced and dated;

(5) An analysis of the borrower's past, existing, and future electric system loads of RE Act beneficiaries and others, including explanation and documentation of all substantive assumptions, primary sensitivity analyses and other substantive considerations used to prepare the estimates. Areas of analysis shall normally include, but are not limited to: developing land use patterns; potential losses of load due to annexation or other causes; prospective residential and commercial development; probable rate levels; the effects of rates and competition from neighboring utilities on loads; existing and anticipated patterns of energy usage and appliance saturation; and availability of alternative energy sources. Load management, conservation, and power marketing considerations must also be included;

(6) A discussion and analysis of alternative scenarios, which shall be required for all PRSs submitted to RUS for approval after January 1, 1993. Normally, unless waived by RUS under § 1710.206, the borrower shall provide a discussion and analysis of the following five scenarios:

(i) Most-probable economic assumptions, with normal weather;

(ii) Most-probable economic assumptions, with severe weather causing higher loads;

(iii) Most-probable economic assumptions, with mild weather causing lower loads;

(iv) Normal weather with more pessimistic macroeconomic assumptions causing lower loads; and

(v) Normal weather with more optimistic macroeconomic assumptions causing higher loads;

(7) Completed RUS Forms 341 and 345 and 10 years data from RUS Form 7 part R. Computer-generated facsimiles may be used if acceptable in form to RUS. Graphs, tables, spreadsheets or other exhibits shall be included as appropriate;

(8) A discussion and documentation of the coordination activities between a power supply borrower and its RUS-borrower members, as applicable, and between the borrower and RUS. If a power supply borrower and any member disagree on an issue or estimate, RUS will provide assistance, if requested, in attempting to resolve the disagreement;

(9) The borrower's general manager's recommendation to the board of directors on adoption of the PRS; and

(10) Approval of the PRS by the borrower's board of directors.

(g) A PRS and its essential supporting data and analysis shall be retained in the borrower's records until the next new PRS is approved by RUS.

(h) Completed PRSs submitted to RUS for approval prior to the effective date of this part, as well as PRSs prepared under work plans approved by RUS prior to the effective date of this part, may meet the requirements of paragraph (f) of this section or corresponding requirements of RUS Bulletin 120-1, at the option of the borrower. All other PRSs must meet the requirements of paragraph (f) of this section.

#### **§ 1710.204 PRS work plan requirements.**

(a) All borrowers required to prepare and maintain a PRS on an ongoing basis are required to prepare and obtain RUS approval of a PRS work plan, except for those borrowers that are members of a power supply borrower that is required to prepare a PRS work plan. The PRS work plan shall establish the resources, methods, schedules, and milestones to be used in the preparation and maintenance of the PRS.

(b) A power supply borrower's work plan shall include the member inputs and coordination mechanisms required for the preparation of its PRS as well as the PRSs of the system's members. Member concurrences in the work plan

are required before the plan is submitted to RUS for approval. The member systems, as well as the power supply borrower, are required to follow the work plan in preparing their respective PRS.

(c) A PRS work plan must be approved by the borrower's board of directors.

(d) A borrower may amend its work plan subject to RUS approval. A new or revised work plan may be required by RUS if RUS concludes the existing plan will not result in a satisfactory PRS on a timely basis.

(e) In addition, a PRS work plan shall:

(1) Identify the borrower and, as applicable, member personnel that will serve as project leaders or liaisons with the authority to make decisions and commit resources within the scope of the work plan;

(2) Provide for residential consumer surveys at least every 3 years to obtain data on appliance and equipment saturation and electricity demand, when residential demand is 50 percent or more of total kWh sales. In the case of a power supply borrower, such surveys shall be coordinated with the borrower's members. They may be based on the aggregation of member-based samples or on a system-wide sample, provided that the latter provides for relevant regional breakdowns as appropriate;

(3) Provide for all other data collection and verification, analyses, modeling, and documentation required in § 1710.203; and

(4) Provide for an ongoing RUS review of the PRS.

(f) Generally, a work plan shall cover a period of 1 to 3 years.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992]

**§ 1710.205 Basic criteria for RUS approval of a PRS.**

RUS will use the following basic criteria in deciding whether to approve a PRS:

(a) The borrower objectively analyzed all relevant factors that influence the consumption of electricity and the requirements for generation and transmission capacity;

(b) The borrower accurately analyzed power requirements stemming from RE Act beneficiaries and non-RE Act beneficiaries;

(c) The borrower developed adequate supporting data, used valid assumptions, analyzed a reasonable range of relevant alternative assumptions and scenarios, and used valid and verifiable analytical techniques and models;

(d) The borrower provided RUS with adequate documentation and assistance to allow for a thorough and independent review;

(e) In the case of a power supply borrower, the preparation of the work plan and PRS was adequately coordinated with its members; and

(f) The PRS was recommended for approval by the borrower's general manager and has been approved by the borrower's board of directors.

**§ 1710.206 Waiver of borrower requirements.**

For good cause shown by the borrower, the Administrator may waive any of the requirements applicable to borrowers in this subpart if the Administrator determines that waiving the requirement will not significantly affect accomplishment of the objectives of this subpart and if the requirement imposes a substantial burden on the borrower. The waiver must be requested in writing by the borrower's general manager.

(Approved by the Office of Management and Budget under control number 0572–0032)

**§§ 1710.207–1710.249 [Reserved]**

**Subpart F—Construction Work Plans and Related Studies**

**§ 1710.250 General.**

(a) An ongoing, integrated planning system is needed by borrowers to determine their short-term and long-term needs for plant additions, improvements, replacements, and retirements. The primary components of the system consist of long-range engineering plans, construction work plans (CWPs), CWP amendments, and special engineering and cost studies. Long range engineering plans identify plant investments required over a period of 10

years or more. CWP's specify and document plant requirements for the short-term, usually 2 to 3 years, and special engineering and cost studies are used to support CWP's and to identify and document requirements for specific items or purposes, such as load management equipment, System Control and Data Acquisition equipment, sectionalizing investments, and additions of generation capacity and associated transmission plant.

(b) Generally, all borrowers are required to maintain up-to-date long range engineering plans approved by their boards of directors. Current CWP's approved by the borrower's board must also be developed and maintained for distribution and transmission facilities and for improvements and replacements of generation facilities. All such distribution, transmission or generation facilities must be included in the respective CWP's regardless of the source of financing.

(c) A long range engineering plan specifies and supports the major system additions, improvements, replacements, and retirements needed for an orderly transition from the existing system to the system required 10 or more years in the future. The planned future system should be based on the most technically and economically sound means of serving the borrower's long-range loads in a reliable and environmentally acceptable manner, and it should ensure that planned facilities will not become obsolete prematurely.

(d) A CWP shall include investment cost estimates and supporting engineering and cost studies to demonstrate the need for each proposed facility or activity and the reasonableness of the investment projections and the engineering assumptions used in sizing the facilities. The CWP must be consistent with the borrower's long range engineering plan and both documents must be consistent with the borrower's RUS-approved power requirements study.

(e) Applications for a loan or loan guarantee from RUS (new loans or budget reclassifications) must be supported by a current CWP approved by both the borrower's board of directors and RUS. RUS approval of these plans relates only to the facilities, equip-

ment, and other purposes to be financed by RUS, and means that the plans provide an adequate basis from a planning and engineering standpoint to support RUS financing. RUS approval of the plans does not mean that RUS approves of the facilities, equipment, or other purposes for which the borrower is not seeking RUS financing. If RUS disagrees with a borrower's estimate of the cost of one or more facilities for which RUS financing is sought, RUS may adjust the estimate after consulting with the borrower and explaining the reasons for the adjustment.

(f) Except as provided in paragraph (g) of this section, to be eligible for RUS financing, the facilities, including equipment and other items, included in a CWP must be approved by RUS before the start of construction. This requirement also applies to any amendments to a CWP required to add facilities to a CWP or to make significant physical changes in the facilities already included in a CWP.

(g) In the case of damage caused by storms and other natural catastrophes, a borrower may proceed with emergency repair work before a CWP or CWP amendment is prepared by the borrower and approved by RUS, without losing eligibility for RUS financing of the repairs. The borrower must notify the RUS regional office in writing, not later than 45 days after the natural catastrophe, of its preliminary estimates of damages and repair costs. Not later than 120 days after the natural catastrophe, the borrower must submit to RUS for approval, a CWP or CWP amendment detailing the repairs.

(h) A CWP may be amended or augmented when the borrower can demonstrate the need for the changes.

(i) A borrower's CWP or special engineering studies must be supported by a Borrower's Environmental Report, and when necessary by an Environmental Analysis or Environmental Impact Statement, as set forth in 7 CFR 1794 or required by other Federal or state regulations or laws.

(j) All engineering activities required by this subpart must be performed by qualified engineers, who may be staff employees of the borrower or outside consultants.

(k) Upon written request from a borrower, RUS may waive in writing certain requirements with respect to long-range engineering plans and CWP's if RUS determines that such requirements impose a substantial burden on the borrower and that waiving the requirements will not significantly affect the accomplishment of the objectives of this subpart. For example, if a borrower's load is forecast to remain constant or decline during the planning period, RUS may waive those portions of the plans that relate to load growth.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992, as amended at 60 FR 67405, Dec. 29, 1995]

**§ 1710.251 Construction work plans—distribution borrowers.**

(a) All distribution borrowers must maintain a current CWP approved by their board of directors covering all new construction, improvements, replacements, and retirements of distribution and transmission plant, and improvements replacements, and retirements of any generation plant. Construction of new generation capacity need not be included in a CWP but must be specified and supported by specific engineering and cost studies. (See § 1710.253.)

(b) A distribution borrower's CWP shall cover a construction period of between 2 and 4 years, and include all facilities to be constructed which are eligible for RUS financing, whether or not RUS financial assistance will be sought or be available for certain facilities. Any RUS financing provided for the facilities will be limited to a 4 year loan period. The construction period covered by a CWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities.

(c) The facilities, equipment and other items included in a distribution borrower's CWP may include:

(1) Line extensions required to connect consumers, improve service reliability or improve voltage conditions;

(2) Distribution tie lines to improve reliability of service and voltage regulation;

(3) Line conversions and changes required to improve existing services or provide additional capacity for new consumers;

(4) New substation facilities or additions to existing substations;

(5) Transmission and substation facilities required to support the distribution system;

(6) Distribution equipment required to serve new consumers or to provide adequate and dependable service to existing consumers, including replacement of existing plant facilities;

(7) Residential security lights;

(8) Communications equipment and meters;

(9) Headquarters facilities;

(10) Improvements, replacements, and retirements of generation facilities;

(11) Load management equipment, automatic sectionalizing facilities, and centralized System Control and Data Acquisition equipment. Load management equipment eligible for financing, including the related costs of installation, is limited to capital equipment designed to influence the time and manner of consumer use of electricity, which includes peak clipping and load shifting. To be eligible for financing, such equipment must be owned by the borrower, although it may be located inside or outside a consumer's premises; and

(12) The cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities, when such cost is capitalized as part of the cost of the facilities.

[57 FR 1053, Jan. 9, 1992; 57 FR 4513, Feb. 5, 1992, as amended at 60 FR 3731, Jan. 19, 1995; 60 FR 67405, Dec. 29, 1995]

**§ 1710.252 Construction work plans—power supply borrowers.**

(a) All power supply borrowers must maintain a current CWP approved by the borrower's board of directors covering all new construction, improvements, replacements, and retirements of distribution and transmission plant, and improvements, replacements, and retirements of generation plant. Applications for RUS financial assistance for such facilities must be supported by a current, RUS-approved CWP. Construction of new generation capacity need not be included in a CWP but must be specified and supported by specific engineering and cost studies.

(b) Normally a power supply borrower's CWP shall cover a period of 3 to 4 years. While comprehensive CWP's are desired, if there are extenuating circumstances RUS may accept a single-purpose transmission or generation CWP in support of a loan application or budget reclassification. The construction period covered by a CWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities.

(c) Facilities, equipment, and other items included in a power supply borrower's CWP may include:

(1) Distribution and related facilities as set forth in § 1710.251(c);

(2) Transmission facilities required to deliver the power needed to serve the existing and planned new loads of the borrower and its members, and to improve service reliability, including tie lines for improved reliability of service, line conversions, improvements and replacements, new substations and substation improvements and replacements, and Systems Control and Data Acquisition equipment, including communications, dispatching and sectionalizing equipment, and load management equipment;

(3) The borrower's proportionate share of transmission facilities required to tie together the operating systems of supporting power pools and to connect with adjacent power suppliers;

(4) Improvements and replacements of generation facilities; and

(5) The cost of engineering, architectural, environmental and other studies and plans needed to support the construction of facilities, when such cost is capitalized as part of the cost of the facilities.

(d) A CWP for transmission facilities shall normally include studies of load flows, voltage regulation, and stability characteristics to demonstrate system performance and needs.

[57 FR 1053, Jan. 9, 1992, as amended at 60 FR 3731, Jan. 19, 1995; 60 FR 67405, Dec. 29, 1995]

**§ 1710.253 Engineering and cost studies—addition of generation capacity.**

(a) The construction or purchase of additional generation capacity and associated transmission facilities by a

power supply or distribution borrower, including the replacement of existing capacity, shall be supported by comprehensive project-specific engineering and cost studies as specified by RUS. The studies shall cover a period from the beginning of the project to at least 10 years after the start of commercial operation of the facilities.

(b) The studies must include comprehensive economic present-value analyses of the costs and revenues of the available self-generation, load management, energy conservation, and purchased-power options, including assessments of service reliability and financing requirements and risks. Requirements for analyzing purchased-power options are set forth in § 1710.254.

(c) Generally, studies of self-generation, load management, and energy conservation options shall include, as appropriate, analyses of:

- (1) Capital and operating costs;
- (2) Financing requirements and risks;
- (3) System reliability;
- (4) Alternative unit sizes;
- (5) Alternative types of generation;
- (6) Fuel alternatives;
- (7) System stability;
- (8) Load flows; and
- (9) System dispatching.

(d) At the request of a borrower, RUS, in its sole discretion, may waive specific requirements of this section if such requirements imposed a substantial burden on the borrower and if such waiver will not significantly affect the accomplishment of the objectives of this subpart.

**§ 1710.254 Alternative sources of power.**

(a) *General.* (1) RUS will make loans to finance the construction of generation facilities by distribution or power supply borrowers and transmission facilities by power supply borrowers only under the following conditions if said borrowers do not already own and operate such types of facilities:

(i) Where no adequate and dependable source of power is available to meet the consumers' needs; or

(ii) Where the rates offered by other power sources would result in a higher cost of power to the consumers than the cost from facilities financed by RUS, and the amount of the power cost

savings that would result from the RUS-financed facilities bears a significant relationship to the amount of the proposed loan.

(2) If a borrower already owns and operates the types of facilities included in a loan request, then a loan for the purposes set forth in paragraph (a)(1) of this section, as well as for the construction of transmission facilities by a distribution borrower, will be considered and evaluated by RUS in terms of whether the proposed facilities constitute the most effective and economical means of meeting the power requirements of the consumers.

(b) Loan requests for addition of generation capacity, including replacement of existing capacity, will be accepted by RUS only when the applicant has satisfactorily completed the investigations of possible alternative sources of power as set forth in this section. The investigations must be coordinated in advance with RUS. The capacity in question may be owned solely by the borrower or owned on an undivided ownership basis with other utilities.

(c) The applicant is required to search out and attempt to utilize capacity available from RUS borrowers and other organizations before developing plans for additional generation capacity. The applicant shall:

(1) Solicit power and energy purchase proposals from all reasonable potential sources of power, such as other electric cooperatives, investor-owned utilities, municipal utility organizations, and Federal and state power authorities.

(2) Except as herein exempted, solicit proposals from independent power producers, including co-generators, to determine the terms and conditions under which these producers can supply the additional power and energy needs of the applicant, without RUS financial assistance. Such solicitations shall be placed in at least three national newspapers or trade publications, and they shall meet all planning, coordination or other requirements imposed by state authorities, as well as RUS's environmental requirements. The following projects are exempted from this requirement to solicit proposals:

(i) Additions to or replacements of generation capacity of less than 10 megawatts.

(ii) Modifications of existing generation units if any resulting increase in generation capacity does not exceed 10 percent of the capacity of the existing unit.

(d) The applicant will evaluate all alternative proposals on an economic, present-value basis, giving consideration to cost-effectiveness, reliability of service, the short- and long-term financial viability of the supplier, and the financial risk to the borrower and its creditors. The applicant will keep RUS fully informed on these evaluations and provide supporting information and analysis as requested by RUS.

(e) After evaluation of all proposals and having informed RUS of the results, the applicant will be expected to negotiate final proposals with the entities submitting the best acceptable offers, if any, keeping RUS fully informed. All contracts entered into shall either be approved in advance by the Administrator or contain language to the effect that the contract is not valid until approved in writing by the Administrator. The Administrator will approve such contracts in a timely manner provided that the borrower has met all applicable requirements, including RUS's environmental requirements, and provided adequate evidence that the alternative selected is the most economical and effective alternative.

(f) RUS may make independent inquiries with potential power suppliers as to the availability of power to meet borrowers' needs. Information developed by RUS will be shared with borrowers at their request.

(g) Further details of RUS requirements for financing of generation and bulk transmission facilities are set forth in 7 CFR part 1712.

(h) At the request of a borrower, RUS, in its sole discretion, may waive specific requirements of paragraphs (b) through (e) of this section if such waiver is required to prevent unreasonable delays in obtaining generation capacity that could result in system reliability problems.

(Approved by the Office of Management and Budget under control number 0572-0032)

**§§ 1710.255—1710.299 [Reserved]****Subpart G—Long-Range Financial Forecasts****§ 1710.300 General.**

(a) RUS encourages borrowers to maintain a current long-range financial forecast. The forecast should be used by the board of directors and the manager to guide the system towards its financial goals.

(b) A borrower must prepare, for RUS review and approval, a long-range financial forecast, approved by its board of directors, in support of its loan application. The forecast must demonstrate that the borrower's system is economically viable and that the proposed loan is financially feasible. Loan feasibility will be assessed based on the criteria set forth in § 1710.112.

(c) The financial forecast and related projections submitted in support of a loan application shall include:

(1) The projected results of future actions planned by the borrower's board of directors;

(2) The financial goals established for margins, TIER, DSC, equity, and levels of general funds to be invested in plant;

(3) A pro forma balance sheet, statement of operations, and general funds summary projected for each year during the forecast period;

(4) A full explanation of the assumptions, supporting data, and analysis used in the forecast, including the methodology used to project loads, rates, revenue, power costs, operating expenses, plant additions, and other factors having a material effect on the balance sheet and on financial ratios such as equity, TIER, and DSC;

(5) Current and projected cash flows;

(6) Projections of future borrowings and the associated interest and principal expenses required to meet the projected investment requirements of the system;

(7) Current and projected kW and kWh energy sales;

(8) Current and projected unit prices of significant variables such as retail and wholesale power prices, average labor costs, and interest;

(9) Current and projected system operating costs, including, but not limited to, wholesale power costs, depre-

ciation expenses, labor costs, and debt service costs;

(10) Current and projected revenues from sales of electric power and energy;

(11) Current and projected non-operating income and expense;

(12) A discussion of the historical experience of the borrower, and in the case of a power supply borrower its member systems as appropriate, with respect to the borrower's market competitiveness as it relates to the rates charged for electricity, competition from other fuels, and other factors. Additional data and analysis may be required by RUS on a case by case basis to assess the probable future competitiveness of those borrowers that have a history of serious competitive problems; and

(13) An analysis of the effects of major factors, such as projected increases in rates charged for electricity, on the ability of the borrower, and in the case of a power supply borrower its member systems, to compete with neighboring utilities and other energy sources.

(d) The following plans, studies and assumptions shall be used in developing the financial forecast:

(1) The RUS-approved CWP;

(2) RUS-approved power requirements data;

(3) The current rate schedules or new rates already approved by the board of directors;

(4) Future plant additions and operating expenses projected at anticipated future cost levels rather than in constant dollars, with the annual rate of inflation for major items specified; and

(5) A sensitivity analysis may be required by RUS on a case-by-case basis taking into account such factors as the number and type of large power loads, projections of future borrowings and the associated interest, projected loads, projected revenues, and the probable future competitiveness of the borrower. When RUS determines that a sensitivity analysis is necessary for distribution borrowers, the variables to be tested will be determined by the General Field Representative in consultation with the borrower and the regional office. The regional office will

consult with the Power Supply Division in the case of generation projects for distribution borrowers. For power supply borrowers, the variables to be tested will be determined by the borrower and the Power Supply Division.

(e) The financial forecast shall use the accrual method, as approved by RUS, for analyzing costs and revenues, and, as applicable, compare the economic results of the various alternatives on a present value basis.

[57 FR 1053, Jan. 9, 1992, as amended at 63 FR 53277, Oct. 5, 1998]

**§ 1710.301 Financial forecasts—distribution borrowers.**

(a) Financial forecasts prepared by distribution borrowers shall cover at least a ten-year period, unless a shorter period is authorized by other RUS regulations.

(b) In addition to the requirements set forth in § 1710.300 of this part, financial forecasts prepared by distribution borrowers in support of a loan application shall:

(1) Include expenditures for any maintenance determined to be needed in the current system's operation and maintenance review and evaluation in order to comply with mortgage covenants and prudent utility practice;

(2) Fully explain the basis for the power cost projections used. Generally, the power supplier's most recent forecasted rates shall be used; and

(3) Use RUS Form 325 or computer-generated equivalent reports.

**§ 1710.302 Financial forecasts—power supply borrowers.**

(a) The requirements of this section apply only to financial forecasts submitted by power supply borrowers in support of a loan from RUS. The financial forecast prepared by power supply borrowers shall demonstrate the effects that the addition of generation, transmission and any distribution facilities will have on the power supply borrower's sales, costs, and revenues, and on the cost of power to the member distribution systems.

(b) The financial forecast shall cover a period of 10 years. RUS may request projections for a longer period of time if RUS deems necessary.

(c) Financial forecasts prepared in support of loan applications to finance additional generation capacity shall include a power cost study as set forth in § 1710.303.

(d) In addition to the requirements set forth in § 1710.300, financial forecasts prepared by power supply borrowers shall:

(1) Identify all plans for generation and transmission capital additions and system operating expenses on a year-by-year basis, beginning with the present and running for 10 years, unless a longer period of time has been requested by RUS.

(2) Integrate projections of operation and maintenance expenses associated with existing plant with those of new proposed facilities to determine total costs of system operation as well as the costs of new generation and generation-related facilities;

(3) Provide an in-depth analysis of the regional markets for power if loan feasibility depends to any degree on a borrower's ability to sell surplus power while its system loads grow to meet the planned capacity of a proposed plant;

(4) If not previously submitted, furnish RUS with all material information on operating agreements, ownership agreements, fuel contracts and any other special agreements that affect annual cost projections, as may be required by RUS on a case by case basis; and

(5) Include sensitivity analysis if required by RUS pursuant to § 1710.300(d)(5).

(e) The projections shall be coordinated in advance with RUS so that agreement can be reached on major aspects of the economic studies. These include, but are not limited to, projections of future kW and kWh requirements, RE Act beneficiary loads, electricity prices, revenues from system and off-system power sales, the cost of prospective plant additions, interest and depreciation rates, fuel costs, cost escalation factors, the discount rate, and other factors.

(f) The projections, analysis, and supporting information must be included in a report that will provide RUS with the information needed to:

(1) Understand and compare various power supply plans;

(2) Determine that the facilities to be financed will perform satisfactorily; and

(3) Determine that the overall system is economically viable and the loan is financially feasible and secure.

[57 FR 1053, Jan. 9, 1992, as amended at 63 FR 53278, Oct. 5, 1998]

**§ 1710.303 Power cost studies—power supply borrowers.**

(a) All applications for financing of additional generation capacity and the associated bulk transmission facilities shall be supported by a power cost study to demonstrate that the proposed generation and associated transmission facilities are the most economical and effective means of meeting the borrower's power requirements. This study usually is a separate study but it may be integrated with the financial forecast required by § 1710.302.

(b) A power cost study shall include the following basic elements:

(1) A study of all reasonably available self-generation, purchased-power, load management, and energy conservation alternatives as set forth in §§ 1710.253 and 1710.254;

(2) A present-value analysis of the costs of the alternatives and their effects on total power costs, covering a period of at least 10 years beyond the projected in-service date of the facilities;

(3) A description of proposed new power-purchase contracts or revisions to existing contracts, and an analysis of the effects on power costs;

(4) Use of sensitivity analyses to determine the vulnerability of the alternatives to a reasonable range of assumptions about fuel costs, failure to achieve projected load growth, changes in operating and financing costs, and other major factors, if the financial forecast is used in support of a loan or loan guarantee that exceeds the smaller of \$25 million or 10 percent of the borrower's total utility plant. Individual sensitivity analyses need not be duplicated if they have been included in other materials submitted to RUS; and

(5) Assessment of the financial risks of the various alternatives, especially

as between capital-intensive and non-capital-intensive alternatives, under the range of assumptions set forth in paragraph (b)(4) of this section.

(c) Power cost studies must use current, RUS-approved power requirements data, and all major assumptions are subject to RUS approval. Alternative assumptions about projected power requirements may be used, however, in conjunction with the sensitivity analyses required by paragraph (b)(4) of this section.

(Approved by the Office of Management and Budget under control number 0572-0032)

**§§ 1710.304—1710.349 [Reserved]**

**Subpart H—Demand Side Management and Renewable Energy Systems**

SOURCE: 59 FR 496, Jan. 4, 1994, unless otherwise noted.

**§ 1710.350 Purpose.**

This subpart sets forth RUS policies and procedures with regard to loans and loan guarantees to RUS borrowers for the purpose of implementing their demand side management (DSM) plans, energy conservation programs, and on-grid and off-grid renewable energy systems. The Administrator reserves the right to determine if loans for purposes under this subpart will be made to a borrower in default under its mortgage and loan contract. As is the case with all other RUS loans, loans for purposes under this subpart will not be made to individuals.

**§ 1710.351 General policy; renewable energy systems.**

(a) Off-grid renewable energy systems will be considered the same as DSM activities and will qualify for either insured loans or loan guarantees pursuant to § 1710.102.

(b) On-grid renewable energy systems will be treated as a generation resource and will be eligible only for loan guarantees pursuant to § 1710.102. Existing RUS policy with respect to generation resources shall generally apply.

(c) RUS loans for renewable energy systems will be made only for systems

#### § 1710.352

utilizing technologies that are proven and commercially available.

#### **§ 1710.352 General policy; energy resource conservation programs.**

This subpart does not replace the energy resource conservation program financed by deferments of loan principal.

#### **§ 1710.353 General policy; demand side management.**

(a) RUS will make loans for the purpose of assisting electric borrowers to implement RUS approved demand side management plans. For the purposes of this regulation energy conservation programs are included as a DSM activity.

(b) RUS will treat demand-side and supply-side resources on an equal basis. All requirements applicable to loans for traditional electric facilities will apply to loans for DSM. In addition the requirements set forth in this subpart will apply.

(c) DSM will be considered a distribution loan purpose, eligible for either insured loans or loan guarantees pursuant to § 1710.102.

(d) RUS will conduct its own evaluation, as specified in this subpart, of a borrower's DSM activities before making a determination on the disposition of a borrower's loan application.

(e) RUS loans for DSM activities will be made only for systems utilizing technologies that are proven and commercially available.

(f) In general, RUS will require pilot project testing of DSM activities new to the borrower.

(g) If the borrower's IRP, DSM plan, project construction and/or financing, and/or rate recovery is subject to the approval of state authorities, the borrower must obtain such approvals before RUS will approve a loan for any purpose for which an RUS approved DSM plan or IRP is required under this subpart.

#### **§ 1710.354 Eligible DSM activities.**

DSM activities that are projected to result in more efficient use of electric system resources and which are consistent with an RUS approved Integrated Resource Plan (IRP) and DSM plan may be eligible for financing. Examples of such DSM activities, which

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are not mutually exclusive, are as follows:

(a) General information and education;

(b) Purchase and installation of borrower owned or consumer owned equipment or materials, including:

(1) Heating, ventilation, air conditioning;

(2) Building envelope;

(3) Appliances;

(4) Load control;

(5) Lighting and lighting control;

(6) Thermal storage; and

(7) Efficient motors and drives;

(c) Rebates for DSM equipment and facilities;

(d) Fuel switching for dual fuel applications where one of the energy sources is electricity; and

(e) Pilot DSM projects.

#### **§ 1710.355 DSM loan applications.**

(a) Any loan application which includes funds for DSM must include all loan support documents required for a loan for electric facilities, and must demonstrate that requirements for need, loan feasibility and loan security are satisfied. In addition, the application must be supported by an RUS approved IRP, except as provided in § 1710.356(a)(1), and an RUS approved DSM plan.

(b) DSM loans will be made to provide financing for DSM activities planned to be implemented within a two year period.

#### **§ 1710.356 Integrated resource plans.**

(a)(1) An RUS approved IRP is required for all loans that include funds for DSM activities, unless the cumulative total of all previous DSM loans and the loan under consideration for that applicant is less than 1 percent of the applicant's total utility plant.

(2) An RUS approved IRP is required for all loans that include funds for on-grid renewable energy systems.

(3) An RUS approved IRP is required for all loans that include funds for off-grid renewable energy systems unless the Administrator determines that an IRP is not needed to determine that the loan is both feasible and secure pursuant to §§ 1710.112 and 1710.113, respectively.

(b)(1) When an IRP is required, a distribution borrower that is a member of a power supply borrower must use the IRP prepared by the power supply borrower for its overall system. This IRP must have been coordinated with all of the member systems and it must have been approved by the board of directors of the power supply borrower. Because of the relationship between the power supply borrower and its members under which the loans incurred by the power supply borrower are primarily to construct, improve or acquire facilities that benefit all members directly or indirectly, the security of loans to all parties is interlinked. Consequently, DSM activities and renewable energy activities must be coordinated among all parties to insure that the activities of one member do not jeopardize the financial integrity or loan security of any other member or that of the power supply borrower.

(2) A distribution system that is not a member of an RUS financed power supply borrower shall prepare its own IRP. An IRP developed by a distribution borrower that is not a member of a power supply borrower need only address its own system, but shall include an analysis of the effects of its DSM activities on its wholesale power costs.

(c) The IRP shall identify supply side and demand side options and analyze their benefits and costs in order to provide adequate and reliable electric service to consumers at the lowest cost for the system as a whole.

(d) The IRP shall include necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; and it shall take into account the ability to verify energy and cost savings achieved through DSM, energy conservation, and renewable energy systems, and the projected durability of such savings measured over time.

(e) The following elements also included in a DSM plan, pursuant to §§ 1710.357 and 1710.358, shall be included except where RUS determines that they are not necessary:

- (1) Load shape objectives;
- (2) Wholesale power pricing policy and costs, and their relationship to the proposed DSM activities;

(3) Ownership and costs of DSM related hardware;

(4) Incentive and marketing costs;

(5) Communication and control costs; and

(6) Monitoring methods and costs.

(f) The IRP shall analyze the DSM effects set forth in § 1710.359.

#### **§ 1710.357 DSM plans.**

(a) A DSM plan approved by the borrower's board of directors is required in support of a loan that includes funds for DSM activities or for off-grid renewable energy systems. The DSM plan shall address the borrower's existing and proposed activities for the same period covered by the Long-Range Financial Forecast submitted in support of the loan application.

(b)(1) A DSM plan prepared by a member of a power supply borrower must be consistent with the IRP prepared by the power supply borrower.

(2) A DSM plan prepared by a distribution borrower that is not a member of an RUS financed power supply borrower must be consistent with the borrower's own IRP.

(c) The level of detail required in the DSM plan is dependent on several factors, for example:

(1) Size and term of loan;

(2) Financial impact of loan on the borrower;

(3) Probability of realization of the estimated impacts;

(4) Magnitude of the estimated effects; and

(5) Potential effects, if any, on other distribution members of a power supply borrower.

(d) RUS will consider effects of proposed and existing DSM plans on government loan security, rates, revenue requirements, competitiveness, other distribution borrowers, power supply borrowers or other industry recognized tests as applicable.

#### **§ 1710.358 Requirements for a DSM plan.**

A DSM plan shall include:

(a) A list of the DSM activities to be financed by the loan including details on implementation such as beginning and completion dates and estimated draw downs of loan funds;

(b) An analysis of the borrower's existing and proposed DSM activities, including sources of financing and projections of the effects of those activities as set forth in § 1710.359;

(c) System specific load research and DSM pilot projects as required by § 1710.353(f);

(d) A benefit/cost and net present value cash flow analysis of each DSM activity included in the plan. Benefits and costs must be expressed in the same units where possible. Short term and long term impacts must be addressed. Who benefits and who pays must be clearly identified. Objectives of a DSM plan shall be stated in terms of load profile adjustments by customer rate class and/or market segment. The benefit/cost analysis shall include the following steps:

(1) Identification of objectives, alternatives, and effects;

(2) Simulation of impacts on the system and its consumers, and the probable costs and benefits, including sensitivity/probability and scenario analysis; and

(3) Selection of DSM activities;

(e) An outline of monitoring and reporting procedures to evaluate the performance of the implemented DSM plan;

(f) A narrative discussing the following:

(1) Scope of the DSM plan;

(2) Resources used to develop the DSM plan;

(3) Internal and external data collection and analysis;

(4) Analysis method used to screen and evaluate the projected programs;

(5) Analysis of existing and projected plans; and

(6) Coordination activities with power supplier.

**§ 1710.359 DSM effects.**

The IRP and the DSM plan shall consider and discuss the expected effects of the borrower's DSM activities. The expected effects to be considered and discussed includes, but are not limited to, the following:

(a) Effects on the utility (supply side effects):

(1) Operations;

(2) Maintenance;

(3) Environmental compliance;

(4) Capacity planning, including deferment of capacity and reliability of capacity;

(5) DSM equipment including purchase, operation and maintenance considerations;

(6) Transmission and distribution effects;

(7) Administrative costs, including administrative and general costs, program costs, DSM planning costs, integration of supply and DSM planning, marketing costs, incentive costs, infrastructure support, monitoring and evaluation costs, bidding costs; and

(8) Revenues and rates;

(b) Effects on consumers (demand side effects):

(1) Equipment purchases;

(2) Operation costs;

(3) Maintenance costs;

(4) Supply voltage quality;

(5) Availability of service and reliability (outages);

(6) Change in benefits received from appliances and housing;

(7) Convenience (availability of equipment, appliances and services);

(8) Change in comfort and air quality levels of buildings; and

(9) Rates, billing level and elasticity;

(c) Effects on competitiveness;

(d) Effects on other member distribution systems of the power supply borrower; and

(e) Effects on power supply borrower.

**§ 1710.360 Submittal of alternate documentation.**

(a) The borrower may have performed analysis and prepared comparable documentation for other purposes, such as for a state regulatory commission. This information may be acceptable to RUS as an IRP or a DSM plan if the borrower demonstrates that the alternative information meets the goals and objectives of this subpart.

(b) The borrower shall advise RUS of all material information provided to other lenders or other governmental authorities relating to their DSM plans. This information shall be provided to RUS as requested.

**§ 1710.361 Type and term of loans.**

(a) The final maturity of loans for purposes under this subpart shall be determined by RUS based on the expected

life of needed capital improvements, expected cost recovery periods, the expected life of program benefits, the certainty of these benefits, and matching costs and benefits.

(b) RUS will normally consider final maturities for DSM loans of up to 5 years. Longer loan terms, not to exceed 10 years, for loans for these purposes will be considered if the borrower can satisfactorily demonstrate to the Administrator an acceptable basis for doing so and can demonstrate that the loan will be feasible and secure pursuant to §§1710.112 and 1710.113, respectively, for the longer period. As used in this paragraph, renewable energy resource equipment and facilities are not considered a DSM purpose. Maturities for such loans will be limited to the expected useful life of the equipment and facilities.

#### **§ 1710.362 Loan approval.**

The amount and scope of loans approved by RUS under this subpart are subject to the discretion of RUS. Applications will be evaluated on the merits of the proposals as outlined in the plans specified in this subpart. RUS approval of a loan for purposes under this subpart and/or RUS approval of IRPs and DSM plans does not relieve a borrower of its responsibilities under this subpart or constitute a representation or warranty by RUS to the borrower or any person that its IRP or DSM plan will work as described therein.

#### **§ 1710.363 Advance and documentation of use of loan funds.**

(a) Loan funds for on-grid renewable energy systems will be advanced using the same procedure as loans for other electric system facilities.

(b) *Loan funds for DSM activities.* (1) Funds for these purposes shall be advanced and used only for the specific projects and purposes detailed in the loan application and supporting documents. Generally funds shall be drawn down on a reimbursement basis. The borrower shall certify completion of work according to the DSM plan.

(2) The borrower shall maintain accounting and plant records sufficient to document the cost and location of DSM activities and to support loan fund advances and disbursements.

(3) All cost associated with DSM projects related to construction, operations or maintenance, shall be accumulated using the borrower's work order procedure. An individual work order or work orders shall be used to record and control the costs of each DSM project. Daily time and material reports referenced to the DSM activity shall be kept to record labor and materials used as the activity(ies) is completed.

(4) All other disbursements for DSM activities must be properly supported by invoices, contracts, or other forms of evidence required by RUS regulations. All such supporting material shall be available at the borrower's premises for review by the RUS Field Accountant, borrower's certified public accountant and other authorized parties as applicable. Costs of DSM activities related to operations and maintenance should be charged to expense in the month incurred. Departures from this prescribed accounting must be approved by RUS subject to the provisions of 7 CFR 1767.13.

(c) Requirements on advance of funds for all insured electric loans are in 7 CFR part 1721, subpart B.

#### **§ 1710.364 Loan limits.**

Cumulative loans DSM activities at the time of loan approval for, including energy conservation programs and off-grid renewable energy systems, shall not exceed the lesser of:

(a) Twenty percent of the borrower's equity at the time of the loan or any time during amortization of the loan; or

(b) An amount approved for such purposes in a final non-appealable order by the applicable regulatory body for inclusion in the borrower's rate base.

### **Subpart I—Application Requirements and Procedures for Insured and Guaranteed Loans**

SOURCE: 60 FR 3731, Jan. 19, 1995, unless otherwise noted.

#### **§ 1710.400 Initial contact.**

(a) Loan applicants that do not have outstanding loans from RUS should

write to the Rural Utilities Service Administration, United States Department of Agriculture, Washington, DC 20250–1500. A field or headquarters staff representative may be assigned by RUS to visit the applicant and discuss its financial needs and eligibility. Borrowers that have outstanding loans should contact their assigned RUS general field representative (GFR) or, in the case of a power supply borrower, the Director, Power Supply Division. Borrowers may consult with RUS field representatives and headquarters staff, as necessary.

(b) Before submitting an application for an insured loan the borrower shall ascertain from RUS the amount of supplemental financing required, as set forth in § 1710.110. If the borrower is applying for either a municipal rate loan subject to the interest rate cap or a hardship rate loan, the application must provide a preliminary breakdown of residential consumers either by county or by census tract. Final data must be included with the application. See § 1710.401(a)(8).

**§ 1710.401 Loan application documents.**

(a) *All borrowers.* All applications for electric loans shall include the documents listed in this paragraph. The first page of the application shall be a list of the documents included in the application. The borrower may use RUS Form 726, Checklist for Electric Loan Application, or a computer generated equivalent as this list.

(1) *Transmittal letter.* A letter signed by the borrower's manager indicating the actual corporate name and taxpayer identification number of the borrower and addressing the following items:

- (i) The need for flood hazard insurance;
- (ii) Breakdown of requested loan funds by state;
- (iii) A listing of the counties served by the borrower;
- (iv) A listing of threatened actions by third parties that could adversely affect the borrower's financial condition, including annexations or other actions affecting service territory, loads, or rates; and

(v) A listing of pending regulatory proceedings pertaining to the borrower.

(2) *Board resolution.* This document is the formal request by the borrower's board of directors for a loan from RUS. The board resolution shall include:

- (i) The requested loan amount, loan term, final maturity, and method of amortization (§ 1710.110(b));
- (ii) The sources and amounts of any supplemental or other financing;
- (iii) Authorization for RUS to release appropriate information to supplemental or other lender(s), and authorization for these lenders to release appropriate information to RUS; and
- (iv) For an insured loan, a statement of whether the application is for a municipal rate loan, with or without the interest rate cap, or a hardship loan. If the application is for a municipal rate loan, the board resolution must indicate whether the borrower intends to elect the prepayment option. See 7 CFR 1714.4(c).

(3) *RUS Form 740c, Cost Estimates and Loan Budget for Electric Borrowers.* This form together with its attachments lists the construction, equipment, facilities and other cost estimates from the construction work plan or engineering and cost studies, and the sources of financing for each component. The date on page 1 of the form is the beginning date of the loan period and shall be the same as the date on the Financial and Statistical Report submitted with the application (paragraph (a)(5) of this section). Form 740c also includes the following information, exhibits, and attachments:

- (i) *Description of funds and materials.* This description details the availability of materials and equipment, any unadvanced funds from prior loans, and any general funds the borrower designates, to determine the amount of such materials and funds to be applied against the capital requirements estimated for the loan period.
- (ii) *Useful life of facilities financed by the loan.* Form 740c must include, as a note, either a statement certifying that at least 90 percent of the loan funds are for facilities that have a useful life of 33 years or longer, or a schedule showing the costs and useful life of those facilities with a useful life of less

than 33 years. This statement or schedule will be used to determine the final maturity of the loan. See § 1710.115.

(iii) *Reimbursement schedule.* This schedule lists the date, amount, and identification number of each inventory of work orders and special equipment summary that form the basis for the borrower's request for reimbursement of general funds on the RUS Form 740c. See § 1710.109. If the borrower is not requesting reimbursement, this schedule need not be submitted.

(iv) *Location of consumers.* If the application is for a municipal rate loan subject to the interest rate cap, or for a loan at the hardship rate, and the average number of consumers per mile of the total electric system exceeds 17, Form 740c must include, as a note, a breakdown of funds included in the proposed loan to furnish or improve service to consumers located in an urban area. See 7 CFR 1714.7(c) and 1714.8(d). This breakdown must indicate the method used by the borrower for allocating loan funds between urban and non urban consumers.

(4) *RUS Form 740g, Application for Headquarters Facilities.* This form lists the individual cost estimates from the construction work plan or other engineering study that support the need for RUS financing for any warehouse and service type facilities included, and funding requested for such facilities shown on RUS Form 740c. If no loan funds are requested for headquarters facilities, Form 740g need not be submitted.

(5) *Financial and statistical report.* Distribution borrowers shall submit these data on RUS Form 7; power supply borrowers shall use RUS Form 12. The form shall contain the most recent data available, which shall not be more than 60 days old when received by RUS.

(6) *Pending litigation statement.* A statement from the borrower's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the borrower. This statement and the statements from counsel required by paragraphs (a)(7) and (15) of this section may be combined into a single document.

(7) *Mortgage information.* A new mortgage will be required if this is a bor-

rower's first application for a loan under the RE Act. A restated mortgage, or a mortgage supplement will be required if there has been a material change to the real property owned by the borrower since the most recent RUS loan, loan guarantee, or lien accommodation, if the requested loan would cause the borrower to exceed its previously authorized debt limit, or if RUS otherwise determines it necessary. If there has been no material change to the real property owned by the borrower since the most recent RUS loan or loan guarantee, the borrower must submit an opinion of its counsel to that effect. If a new or restated mortgage or a mortgage supplement is required, the borrower must provide the following:

(i) *Property schedule.* For a new or restated mortgage or for a mortgage supplement, the following information shall be submitted in a form satisfactory to RUS:

(A) A listing of the counties where the borrower's existing electric facilities and new facilities are or will be located;

(B) A listing and description of all real property owned by the borrower; and

(C) An opinion of the borrower's counsel certifying that the property schedule is complete and adequate for inclusion in a security instrument to be executed by the borrower to secure an RUS loan.

(ii) *Maximum debt limit.* For a new mortgage, or if the proposed loan would result in the borrower's existing mortgage debt limit being exceeded, a resolution of the borrower's board of directors, and any other authorizations or certifications required by State law, certifying that a new debt limit has been legally established that is adequate to accommodate existing indebtedness and the proposed new financing, including any concurrent loans.

(8) *Rate disparity and consumer income data.* If the borrower is applying under the rate disparity and consumer income tests for either a municipal rate loan subject to the interest rate cap or a hardship rate loan, the application must provide a breakdown of residential consumers either by county or by

census tract. In addition, if the borrower serves in 2 or more states, the application must include a breakdown of all ultimate consumers by state. This breakdown may be a copy of Form EIA 861 submitted by the Borrower to the Department of Energy or in a similar form. See 7 CFR 1714.7(b) and 1714.8(a). To expedite the processing of loan applications, RUS strongly encourages distribution borrowers to provide this information to the GFR prior to submitting the application.

(9) *Standard Form 100—Equal Employment Opportunity Employer Report EEO—1*. This form, required by the Department of Labor, sets forth employment data for borrowers with 100 or more employees. A copy of this form, as submitted to the Department of Labor, is to be included in the application for an insured loan if the borrower has more than 100 employees. See § 1710.122.

(10) *Form AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions*. This statement certifies that the borrower will comply with certain regulations on debarment and suspension required by Executive Order 12549, Debarment and Suspension (3 CFR, 1986 Comp., p. 189). See 7 CFR part 3017 and § 1710.123.

(11) *Uniform Relocation Act assurance statement*. This assurance, which need not be resubmitted if previously submitted, provides that the borrower shall comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987 and 1991. See § 1710.124.

(12) *Lobbying*. The following information on lobbying is required pursuant to 7 CFR part 3018 and § 1710.125. Borrowers applying for both insured and guaranteed financing should consult RUS before submitting this information.

(i) *Certification regarding lobbying*. This statement certifies that the borrower shall comply with certain requirements with respect to restrictions on lobbying activities.

(ii) *Standard Form LLL—Disclosure of Lobbying Activities*. This disclosure

form is required from those borrowers engaged in lobbying activities.

(13) *Federal debt delinquency requirements*. See 1710.126. The following documents are required:

(i) *Report on Federal debt delinquency*. This report indicates whether or not a borrower is delinquent on any Federal debt.

(ii) *Certification Regarding Federal Government Collection Options*. This statement certifies that a borrower has been informed of the collection options the Federal Government may use to collect delinquent debt. The Federal Government is authorized by law to take any or all of the following actions in the event that a borrower's loan payments become delinquent or the borrower defaults on its loans:

(A) Report the borrower's delinquent account to a credit bureau;

(B) Assess additional interest and penalty charges for the period of time that payment is not made;

(C) Assess charges to cover additional administrative costs incurred by the Government to service the borrower's account;

(D) Offset amounts owed directly or indirectly to the borrower under other Federal programs;

(E) Refer the borrower's debt to the Internal Revenue Service for offset against any amount owed to the borrower as an income tax refund;

(F) Refer the borrower's account to a private collection agency to collect the amount due; and

(G) Refer the borrower's account to the Department of Justice for collection.

(14) *Articles of incorporation and bylaws*. The following are required if either document has been amended since the last loan application was submitted to RUS, or if this is a borrower's first application for a loan under the RE Act:

(i) The borrower's articles of incorporation currently in effect, as filed with the appropriate state office, setting forth the borrower's corporate purpose; and

(ii) The bylaws currently in effect, as adopted by the borrower's board of directors, setting forth the manner by which the borrower's organization will be governed and regulated.

(15) *State regulatory approvals.* In states in which regulatory authorities have jurisdiction over the borrower's rates, the borrower must provide satisfactory evidence, pursuant to §§ 1710.105 and 1710.151(f), based on the information available, such as an opinion of counsel or of another qualified source, that the state regulatory authority will not exclude from the borrower's rate base any of the facilities included in the loan request, or otherwise prevent the borrower from charging rates sufficient to repay with interest the debt incurred for the facilities.

(16) *Seismic safety certifications.* This certification shall be included, if required under 7 CFR part 1792.

(17) *Rates.* (i) A distribution borrower shall explain any recent or planned changes in retail rates, the status of any pending rate cases before a state regulatory authority, or other pertinent rate information.

(ii) A power supply borrower shall submit a schedule of its wholesale rates currently in effect. Any changes in this schedule are subject to RUS approval.

(18) *Additional supporting data.* Additional supporting data may be required by RUS depending on the individual application or conditions. Examples of such additional supporting data include information about acquisitions, headquarters facilities, generation or transmission facilities, large power loads or special loads.

(b) *Distribution borrowers.* In addition to the items in paragraph (a) of this section, applications for loans submitted by distribution borrowers shall include the borrower's area coverage and line extension policies. If there have been any amendments to area coverage or line extension policies since the last loan application submitted to RUS, or if this is a borrower's first application for a loan under the RE Act, the borrower shall submit the board of directors' approved policies on area coverage and line extensions. See §§ 1710.103 and 1710.151(a).

(c) *Primary support documents.* In addition to the loan application, consisting of the documents required by paragraphs (a) and (b) of this section, all borrowers must also provide RUS

with the following primary support documents pursuant to § 1710.152:

(1) Along with the loan application, the borrower shall submit to RUS a Long-Range Financial Forecast (LRFF), that meets the requirements of subpart G of this part. The forecast shall include any sensitivity analysis or analysis of alternative scenarios required by subpart G of this part, and shall be accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the LRFF, and directing management to take whatever steps may be necessary, including the filing for rate increases, to achieve the TIER goals set forth in the LRFF.

(2) Prior to RUS's acceptance of the loan application, the borrower shall submit to RUS and receive approval of:

(i) Power Requirements Study (PRS) that meets the requirements of subpart E of this part, and is accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the PRS.

(ii) Construction Work Plan (CWP) and/or related engineering and cost studies that meets the requirements of subpart F of this part, and is accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the CWP and/or engineering and cost studies.

(iii) Borrower's Environmental Report (BER), or other environmental information as required by 7 CFR part 1794.

(iv) Demand Side Management Plan and/or Integrated Resource Plan, if required by subpart H of this part.

(d) *Submission of documents.* (1) Generally, all information required by paragraphs (a), (b), and (c)(1) of this section is submitted to RUS in a single application package. The information required by paragraph (c)(2) of this section is generally submitted to, and approved by RUS before the application is submitted.

(2) To facilitate loan review, RUS urges borrowers to ensure that their applications contain all of the information required by this section before submitting the application to RUS. Borrowers may consult with RUS field representatives and headquarters staff

## §§ 1710.402—1710.403

as necessary for assistance in preparing loan applications.

(3) RUS may, in its discretion, return an application to the borrower if the application is not materially complete to the satisfaction of RUS within 10 months of receipt of any of the items listed in paragraph (a) or (b) of this section. RUS will generally advise the borrower in writing at least 2 months prior to returning the application as to the elements of the application that are not complete.

(4) If an application is returned, an application for the same loan purposes will be accepted by RUS if satisfactory evidence is provided that all of the information required by this section will be submitted to RUS within a reasonable time. An application for loan purposes included in an application previously returned to the borrower will be treated as an entirely new application.

(e) *Complete applications.* An application is complete when all information required by RUS to approve a loan is materially complete in form and substance satisfactory to RUS.

(f) *Change in borrower circumstances.* A borrower shall, after submitting a loan application, promptly notify RUS of any changes in its circumstances that materially affect the information contained in the loan application or in the primary support documents.

(g) *Interest rate category.* For pending loans, RUS will promptly notify the borrower if its eligibility for an interest rate category changes pursuant to new information from the Department of Energy or the Bureau of the Census. See 7 CFR part 1714.

(Approved by the Office of Management and Budget under control numbers 0572-0017, 0572-0032 and 0572-1013.)

## §§ 1710.402—1710.403 [Reserved]

### § 1710.404 Additional requirements.

Additional requirements for insured electric loans are set forth in 7 CFR part 1714.

### § 1710.405 Supplemental financing documents.

(a) The borrower is responsible for ensuring that the loan documents required for supplemental financing pur-

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suant to § 1710.110 are executed in a timely fashion. These documents are subject to RUS approval.

(b) Security. Any security offered by the borrower to a supplemental lender is subject to RUS approval.

### § 1710.406 Loan approval.

(a) A loan is approved when the Administrator signs the administrative findings.

(b) If the loan is not approved, RUS will notify the borrower of the reason.

### § 1710.407 Loan documents.

Following approval of a loan, RUS will forward the loan documents to the borrower for execution, delivery, recording, and filing, as directed by RUS.

## PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

### Subpart A—General

Sec.

1714.1 [Reserved]

1714.2 Definitions.

1714.3 Applicability of provisions.

1714.4 Interest rates.

1714.5 Determination of interest rates on municipal rate loans.

1714.6 Interest rate term.

1714.7 Interest rate cap.

1714.8 Hardship rate loans.

1714.9 Prepayment of insured loans.

1714.10—1714.49 [Reserved]

### Subpart B—Terms of Insured Loans

1714.50—1714.54 [Reserved]

1714.55 Advance of funds from insured loans.

1714.56 Fund advance period.

1714.57 Sequence of advances.

1714.58 Amortization of principal.

1714.59 Rescission of loans.

AUTHORITY: 7 U.S.C. 901–950(b); Pub. L. 99–591, 100 Stat. 3341; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 58 FR 66260, Dec. 20, 1993, unless otherwise noted.

### Subpart A—General

#### § 1714.1 [Reserved]

#### § 1714.2 Definitions.

The definitions set forth in 7 CFR 1710.2 are applicable to this part, unless otherwise stated. References to specific